

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

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15-CR-268(BMC)

3 UNITED STATES OF AMERICA,

United States Courthouse
Brooklyn, New York

4 -against-

5 September 19, 2017
6 9:30 a.m.

7 MUHANAD MAHMOUD AL FAREKH,
8 Defendant.

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9 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL
10 BEFORE THE HONORABLE BRIAN M. COGAN
11 UNITED STATES DISTRICT JUDGE
12 BEFORE A JURY

13 APPEARANCES

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(Continued following page.)

1 (Appearances continued.)

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1 (In open court out of the presence of the jury.)

2 COURTROOM DEPUTY: All rise.

3 THE COURT: Good morning. Have a seat, please.

4 Defendant is present. What is on the agenda before we bring
5 in the jury?

6 MR. RUHNKE: Your Honor I have looked at the
7 Government's, we're not going to get to Vidino until this
8 afternoon so I think I'll hold my comments on it. The idea
9 he's going to define radicalization as if it has a definition
10 does not solve my problem. We can take that up this
11 afternoon, we're waiting for one juror.

12 MR. RUHNKE: Okay.

13 THE COURT: Look, I now understand better what the
14 Government is trying to do. I think it's a really close
15 question. Essentially, the Government is facing a situation
16 like sometimes they will call a DNA expert in a case in which
17 there is no DNA to explain to the jury that it's okay that
18 there is no DNA. And Mr. Vidino is here to say people get
19 attracted to Jihad from all walks of life and what we're
20 seeing here, without referring to this case, is not unheard
21 of. And the Government is doing that to try to stop the jury
22 from asking the question, or at least to give them an answer
23 to the question, how could someone who seems like a normal
24 college student get caught up in something this bizarre. The
25 Government wants to have an expert to say, well, without

1 referring to the facts of this case I've looked at people who
2 get caught up in this thing and sometimes there are examples
3 when this kind of thing happens. That's the purpose.

4 MR. RUHNKE: Your Honor, I don't see any
5 difference -- I understand the CSI kind of affirmative strike
6 that we don't have fingerprints, well, you don't get
7 fingerprints all the time, we don't have DNA, well, DNA is
8 only available if you locate DNA and we haven't located it in
9 this case. This is something different.

10 I mean, your Honor I believe clearly would not
11 permit a witness to testify in a case of white collar fraud to
12 say, how could some nice college graduate stockbroker get so
13 deep into an insider trading scheme. Well, there is
14 well-established norms for criminalization. If you grow up in
15 poverty, that's a risk factor for criminal behavior. If
16 you're a male, that's a risk factor for criminal behavior. If
17 you witness domestic violence, that a risk factor for criminal
18 behavior. You wouldn't allow a witness to say all kinds of
19 people commit crimes, and that's what the Government is
20 proposing to do here.

21 There is no radicalization that has a definition
22 outside what the media likes to use. The Government wants
23 this witness to define what radicalization is. That's in
24 their reply. I think that's completely improper.

25 THE COURT: The difference between the scenarios

1 you're articulating and this one is, I think, that while
2 jurors can readily understand that people get involved in
3 crimes all the time, it may be beyond the ken of the average
4 juror to have an understanding of why someone -- I don't mean
5 this literally -- but leaves humanity, and reverts to an
6 eighth century mentality. It's more deviant, a juror or jury
7 could think, than simply committing crime. So the Government
8 is trying to help answer that possible concern.

9 I'm not saying I've decided this, I have not. But
10 it does strike me as such a strange situation that it might be
11 something the jury could use some help on. Whether this is
12 the help, I have no idea. We clearly need a 104(a) hearing at
13 least. But at least I understand where the Government is
14 coming from.

15 Before yesterday I thought the Government was trying
16 to say there is a profile and here is the profile, without
17 referring to the defendant, and it so happens the profile fits
18 the defendant. That I thought was wrong. Because it was
19 clear that there is no profile. But now I get the point,
20 there is no profile is the point.

21 MR. RUHNKE: Your Honor, if it helps you in the
22 decision process, we're going to have, over objection, but
23 we're going to have two case studies presented in full to the
24 jury as to how nice, young men wind up in Pakistan training
25 with al-Qaeda and agreeing to bomb the New York subway system.

1 They will describe their journey. It will not be a mystery at
2 all as to how this could happen.

3 I think putting it in the guise of expert testimony
4 is a problem. And there is a confusion of the issues
5 component to Rule 403 that comes to mind, a propensity issue
6 that comes to mind, 404(a) that comes to mind. We are going
7 to continue to object to it until your Honor makes an actual
8 ruling.

9 THE COURT: Okay. I understand. Anything the
10 Government wants to add at this point? I'm not going to rule
11 right now.

12 MS. COOK: Your Honor, the Court has articulated
13 what the Government's response is. This truly is general
14 testimony offered to educate the jury, to address any
15 assumptions that might be out there. The Government agrees
16 that radicalization is beyond the ken of regular citizens,
17 unlike a motivation such as greed which can lead to a
18 stockbroker engaging in fraudulent behavior. The Government
19 agrees with holding the Rule 104 hearing presenting that
20 information in testimony. But I will put everyone on notice
21 that the term radicalization will come up, that is part of
22 Dr. Vidino's expertise, his training and expertise. The word
23 will be out there and for him to provide a brief explanation
24 of radicalization and put to rest any idea that there is a
25 profile or we're trying to tie it to the defendant, it will

1 help the jury understand Dr. Vidino's testimony.

2 MR. RUHNKE: The issue of radicalization will be out
3 there only if your Honor permits it. It's not inevitable.

4 THE COURT: I don't see anything magic about
5 radicalization. What we're talking about is people who are
6 part of mainstream western society who decide to fight Jihad,
7 the shorthand version of that is radicalization. The term
8 doesn't give me a problem. Whether the testimony does, I'll
9 have to hear it. But he can use the term to summarize what
10 I've just defined it as, if that's what he's essentially
11 doing.

12 MR. RUHNKE: I haven't seen a definition of
13 radicalization in the Government's papers. I don't know
14 how -- we'll have a 104 hearing. We'll flush it out, I guess
15 is the answer.

16 THE COURT: I think it's a commonly used word these
17 days. I don't think it's a term of art. So I don't mind him
18 describing the phenomenon by that word. Whether he can
19 describe the phenomenon at all is the question. I think I've
20 got it. Let's see what happens.

21 MR. RUHNKE: One other issue, when the handwriting
22 expert testifies later today -- I don't know if that is this
23 morning or this afternoon -- it's obvious that some writings,
24 the known exemplars that he's examined, are associated with
25 Mr. Al Farekh being incarcerated, letters to his parents.

1 There is an administrative remedy form that he filled out.
2 We've been discussing the best way to handle it. Does the
3 Government intend to introduce the exemplars, the known
4 exemplars?

5 MR. TUCKER: I raised this a few weeks ago and
6 counsel didn't want to engage on it at that point. Here is my
7 current plan, because I don't want to cloud the record with a
8 bunch of documents that I think would be unnecessarily
9 prejudicial to the defendant. There is a reason why we have
10 him in civilian clothes here today.

11 My plan is to submit a single exemplar, Government's
12 Exhibit 7321 of the appellate documents to the BOP. I'm
13 perfectly happy to redact the top of that if counsel wants; I
14 wasn't getting any feedback on that. The important thing from
15 us is there are a number of very stark examples of
16 similarities in handwriting. I would use that one document
17 and then we would transition to what is marked as 2003A, which
18 is the PowerPoint presentation, which just has words and
19 character combinations lifted so there is no context. I think
20 that minimizes the prejudice while it also gives the jurors
21 enough information to understand what Mr. Watts did here and
22 allow them to sort of make the connection before we move to
23 the -- I keep calling it the deck, but the presentation.

24 MR. RUHNKE: I think your Honor should look at that
25 document before you make a ruling. The document's content is

1 obviously by somebody who is incarcerated, who is complaining
2 about certain conditions of confinement. It can't be
3 redacted. Certainly I agree to a process where the witness
4 says, I examined certain documents that are conceded to have
5 been written by Mr. Al Farekh, from these documents I made
6 certain comparisons, then go right to the PowerPoint.

7 THE COURT: I think the jury is entitled to see the
8 exemplar to weigh the expert's testimony. The fact that it
9 contains indications that the defendant is or has been, they
10 don't know that he is in now, has been in custody, that's not
11 terribly troubling to me. Despite our best efforts, I find
12 that juries always find out that when serious charges are
13 involved, that the defendant is in custody, they kind of
14 assume that.

15 MR. RUHNKE: The point your Honor raises is what
16 concerns me, that he, quote/unquote, "has been incarcerated
17 previously".

18 THE COURT: He was arrested. The jury doesn't know
19 if he's still in custody or arrested and gave an exemplar
20 while he was in custody. I think that's a risk that you just
21 have to take. But I'll look at the document and see how
22 severe it is.

23 MR. RUHNKE: What we propose, I agree I think jurors
24 figure out that somebody is incarcerated, these gentlemen
25 aren't all sitting here because they like Mr. Al Farekh a lot.

Proceedings

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1 We're going to propose a limiting instruction along the lines
2 of, 'It is not uncommon in Federal Court where someone is
3 charged with a serious crime to be detained pending trial,
4 that's the situation with Mr. Al Farekh. That in no way
5 impacts on the presumption of innocence that you should give
6 him.'

7 THE COURT: Sounds right.

8 MR. TUCKER: Absolutely no objection to that
9 instruction. So we have a nice record, I'm not going to put
10 all the letters in, just pick that one. I chose that one
11 because I thought it was the least problematic of the set.

12 MR. RUHNKE: We appreciate that.

13 MR. TUCKER: Content-wise.

14 THE COURT: Let's check on the jury.

15 MR. TUCKER: Your Honor, one housekeeping issue.
16 Your Honor may want to reserve until the end of trial or your
17 Honor may address this now. Defense on Friday made a motion
18 for a mistrial based on the publicity. Your Honor ultimately
19 decided yesterday morning to question the jury collectively,
20 and for the record all the jurors indicated in the negative
21 that they had not read that coverage, that they had followed
22 the Court's instruction. And if your Honor would, that may be
23 an opportunity for your Honor to rule on the motion or maybe
24 your Honor wants to wait.

25 THE COURT: Well, no, I thought I ruled on it when

1 it was made by saying there is certainly no grounds for a
2 mistrial. I consider that a ruling. To the extent anyone
3 thinks it wasn't, it was. That motion is denied. I agreed
4 notwithstanding that kind of sua sponte to follow the
5 procedure that I did with regard to instructing the jury on
6 Friday and questioning them as a group yesterday. That's what
7 happened.

8 Anything else? The juror reports they won't be here
9 until ten.

10 MR. MAHER: One more clerical issue. Last week when
11 I cross-examined Mr. Yar, I had him write some language on a
12 piece of paper. I identified that as Defense Exhibit 1 for
13 identification purposes. I did not move that into evidence.
14 What I'm proposing is we're going to relabel that Defendant's
15 Exhibit 6 in light of the five exhibits that have come through
16 the Rule 15 deposition.

17 THE COURT: That's fine.

18 MR. TUCKER: Without objection.

19 THE COURT: That's received.

20 We'll be in touch with you. The juror said they'll
21 be here in 15 minutes.

22 (Whereupon, a brief recess was taken.)

23 THE COURT: Defendant has entered, let's bring in
24 the jury.

25 (Jury enters the courtroom.)

J. Dalziel - direct - Tucker

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1 Everyone, be seated please. Good morning, ladies
2 and gentlemen.

3 THE COLLECTIVE JURY: Good morning.

4 THE COURT: We'll finish off the deposition. Let's
5 continue.

6 (Video played.)

7 (Video stopped.)

8 THE COURT: Okay. Government's next witness.

9 MR. TUCKER: The Government calls John Dalziel.

10 THE COURT: Collect the binders from the jurors
11 first.

12 (Witness takes the witness stand.)

13 J O H N D A L Z I E L, called as a witness, by the
14 Government, having been first duly sworn/affirmed, was
15 examined and testified as follows:

16 THE WITNESS: I do.

17 COURTROOM DEPUTY: State and spell your name for the
18 record.

19 THE WITNESS: John Dalziel, D-A-L-Z-I-E-L.

20 MR. TUCKER: May I inquire, your Honor?

21 THE COURT: You may.

22 DIRECT EXAMINATION

23 BY MR. TUCKER:

24 Q Good morning, Mr. Dalziel.

25 A Good morning.

J. Dalziel - direct - Tucker

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1 Q Where do you work, sir?

2 A I'm a physical security adviser for Blue Cross/Blue
3 Shield of North Dakota in Fargo, North Dakota.

4 Q Where did you work before you went to work for Blue
5 Cross/Blue Shield?

6 A I worked for the previous 22 years with the FBI.

7 Q What was your title? Were you an agent with the FBI?

8 A I was a Special Agent, a Supervisory Special Agent, and I
9 was an Assistant Legal Attache.

10 Q Did you ever serve overseas with the Federal Bureau of
11 Investigation?

12 A Yes, I did. I served in Iraq, Lebanon, Afghanistan, and
13 Djibouti.

14 Q Where is Djibouti?

15 A In Africa.

16 Q I want to turn your attention to September 2015, what was
17 your assignment with the Bureau at that time?

18 A I was an Assistant Legal Attache assigned to U.S.
19 Embassy, Kabul, Afghanistan.

20 MR. TUCKER: Ms. Clarke, please turn on the document
21 camera.

22 Q I'm going to show you what is in evidence as Government's
23 Exhibit 206. Can you see that, Mr. Dalziel?

24 A Yes, I can.

25 Q Can you indicate by tapping on your screen where

J. Dalziel - direct - Tucker

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1 specifically in Afghanistan you were posted?

2 A In Kabul.

3 Q For the record, you're indicating Kabul?

4 A Yes.

5 Q What was your title in Afghanistan?

6 A Assistant Legal Attache.

7 Q What is an Assistant Legal Attache? What are their
8 responsibilities?

9 A My primary responsibility was to partner up with host
10 nation law enforcement to coordinate investigations that are
11 the interest of both Afghanistan and the United States. That
12 coordination results in training and equipment, conducting
13 interviews, and obtaining evidence.

14 Q I want to turn your attention to September 4, 2015. Did
15 there come a time on that day when you received a USB drive
16 and other computer equipment?

17 A Yes, I did.

18 Q Where were you when you received that equipment?

19 A Outside the Chancery building on U.S. Embassy compound,
20 Kabul, Afghanistan.

21 Q What is the Chancery?

22 A The Chancery on the U.S. Embassy compound is a secure
23 building that houses the major offices, the Ambassador, the
24 FBI office. And it's the only building on the compound that
25 is guarded by the Marines.

J. Dalziel - direct - Tucker

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1 Q Were you told in advance to be at that location to
2 receive those materials?

3 A Yes, I was.

4 Q So it's clear, Mr. Dalziel, were you present when those
5 materials were originally obtained?

6 A No.

7 Q Sitting here today, do you have any first-hand knowledge
8 or information about where those electronic materials and
9 drives came from?

10 A No, I do not.

11 Q I'm going to show you what is in evidence as Government's
12 Exhibit 700, for the record it is a USB drive. Was this drive
13 among the items that you received on September 4, 2015, at the
14 U.S. Embassy in Kabul?

15 A Yes, it was.

16 Q After you received the drive, did you attempt to access
17 it or manipulate its contents in anyway?

18 A No, I did not.

19 Q What did you do?

20 A I packaged it and secured it.

21 Q What did you do after that?

22 A I brought it back to the United States and gave it to FBI
23 New York.

24 Q That's FBI agents working in New York City?

25 A Yes.

J. Dalziel - cross - Ruhnke

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1 MR. TUCKER: No further questions, your Honor.

2 THE COURT: Any cross?

3 CROSS-EXAMINATION

4 BY MR. RUHNKE:

5 Q Good morning, sir.

6 A Good morning.

7 Q If I understand your testimony correctly, you have no
8 personal knowledge of whether this device was recovered in the
9 Middle East someplace; is that correct?

10 A That's correct.

11 Q It could have been discovered somewhere in Africa, as far
12 as you know?

13 A I have no knowledge.

14 Q South Pole, as far as you know?

15 A I have no knowledge.

16 MR. RUHNKE: Thank you.

17 THE COURT: Any redirect?

18 MR. TUCKER: No, your Honor.

19 THE COURT: You may step down. Thank you very much.

20 (Whereupon, the witness was excused.)

21 THE COURT: Government may call the next witness.

22 MR. TUCKER: Government calls Alan Zaya.

23 (Witness takes the witness stand.)

24 A L A N Z A Y A, called as a witness, by the Government,
25 having been first duly sworn/affirmed, was examined and

A. Zaya - direct - Tucker

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1 testified as follows:

2 THE WITNESS: I do.

3 COURTROOM DEPUTY: State and spell your name.

4 THE WITNESS: A-L-A-N, Z-A-Y-A.

5 MR. TUCKER: May I proceed, your Honor?

6 THE COURT: You may.

7 DIRECT EXAMINATION

8 BY MR. TUCKER:

9 Q Good morning, sir.

10 A Good morning, sir.

11 Q What do you do for a living?

12 A I'm a translator with the FBI.

13 Q What languages do you speak?

14 A Arabic, Assyrian and English.

15 Q When you do translation work for the FBI, what languages
16 do you translate?

17 A Arabic to English, and English to Arabic.

18 THE COURT: Sir, let him finish the question before
19 you start to answer.

20 THE WITNESS: Sure.

21 Q How did you come to learn Arabic?

22 A I was born and raised in Iraq where the official language
23 is Arabic.

24 Q Would you tell the jury just a little bit about your
25 educational background?

A. Zaya - direct - Tucker

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1 A I have one-year diploma in accounting, and a BA in
2 computer information system.

3 Q How long have you been a translator for the FBI?

4 A Since 1996.

5 Q Have you received specialized training in the course of
6 your work?

7 A Yes, I completed and attended several translation
8 workshops, seminars and online courses.

9 Q Are some of those trainings provided by the FBI?

10 A They were.

11 Q Have you prepared translations for use in court before?

12 A Absolutely, yes.

13 MR. TUCKER: Your Honor, the Government would tender
14 the witness as an expert linguist in the Arabic language,
15 pursuant to Rule 702.

16 MR. RUHNKE: No objection.

17 THE COURT: He may testify as to his opinions.

18 MR. TUCKER: May I approach the witness?

19 THE COURT: You may.

20 MR. TUCKER: I'm showing the witness what have been
21 marked for identification Government's Exhibit 701 through 708
22 and Government's Exhibits 701T through 708T.

23 Q Do you see those documents, sir?

24 A I do.

25 Q Focusing first on Government's Exhibit 701 through 708,

A. Zaya - direct - Tucker

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1 what are those documents just generally?

2 A Say it again?

3 Q Focusing you on Government's Exhibit 701 through 708,
4 what are those documents generally?

5 A They are messages from the subject.

6 Q I want to be clear, those are handwritten letters?

7 A They were, they are.

8 Q Focusing your attention on 701T through 708T, are those
9 the translations that you prepared of Government's Exhibit 701
10 through 708?

11 A They are.

12 Q You prepared those in advance of your testimony here
13 today?

14 A Absolutely.

15 Q Did you use any resources or references -- let me just
16 finish my question so the court reporter can get us both down.

17 Did you use any resources or reference materials
18 when you prepared your translations?

19 A I did. My dictionaries, both text and electronic. I
20 checked my notes. And when necessary I check with my
21 colleagues too.

22 Q So it's clear, you used electronic and paper
23 dictionaries?

24 A Absolutely.

25 Q You conferred with your colleagues as well?

A. Zaya - direct - Tucker

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1 A When necessary.

2 Q Also so it's clear, are Government Exhibits 701 through
3 708 partially in English?

4 A Partially in English, yes.

5 Q So you translated the Arabic portions?

6 A Only the Arabic section.

7 THE COURT: Sir, take the microphone and move it in
8 front of you. Thank you.

9 Q I'm going to ask my last question again. Let me finish
10 it so we can make a clear record.

11 You translated the Arabic portions of Government's
12 Exhibit 701 through 708?

13 A I did.

14 Q So directing your attention to 701T through 708T, in your
15 opinion, as an expert Arabic linguist, are those complete and
16 accurate translations from Arabic to English of Government's
17 Exhibit 701 through 708?

18 A Absolutely.

19 MR. TUCKER: Your Honor, the Government moves to
20 admit Government's Exhibit 701T through 708T subject to
21 connection, your Honor.

22 MR. MAHER: Prior objection to these documents.

23 THE COURT: The prior objections are overruled.
24 They are admitted subject to connection.

25 (Government Exhibit 701T - 708T were received in

A. Zaya - direct - Tucker

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1 evidence.)

2 Q Sir, were any of those documents, 701 through 708,
3 signed?

4 A They were.

5 Q In what language were they signed?

6 A Arabic.

7 Q What was the name they were signed?

8 A Abdullah al-Shami.

9 MR. TUCKER: No further questions, your Honor.

10 THE COURT: Any cross?

11 MR. MAHER: No.

12 THE COURT: You may step down.

13 (Whereupon, the witness was excused.)

14 THE COURT: Next witness.

15 MR. TUCKER: The Government calls Youad Daniel.

16 (Witness takes the witness stand.)

17 Y O U A D D A N I E L, called as a witness, by the
18 Government, having been first duly sworn/affirmed, was
19 examined and testified as follows:

20 THE WITNESS: I do.

21 COURTROOM DEPUTY: Please state and spell your name
22 for the record.

23 THE WITNESS: Youad Daniel, Y-O-U-A-D, D-A-N-I-E-L.

24 THE COURT: You may inquire.

25 MR. TUCKER: Thank you, your Honor.

Y. Daniel - direct - Tucker

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1 DIRECT EXAMINATION

2 BY MR. TUCKER:

3 Q Mr. Daniel, what do you do for a living, sir?

4 A I'm a translator for the FBI.

5 Q What languages do you speak?

6 A Arabic, English, Assyrian, and some Turkomen.

7 Q That's T-U-R-K-O-M-E-N?

8 A Yes, sir.

9 Q What is your native language?

10 A Assyrian.

11 Q When you do translation work for the FBI, what languages
12 do you translate?

13 A Arabic to English and vice versa.

14 Q How did you come to speak Arabic?

15 A Arabic, because Arabic is like the common language in
16 Iraq where I grew. So first grade and I finish high school
17 all Arabic.

18 Q Would you tell the jury a little bit about your
19 educational background, please?

20 A Yes. I finish high school back home. And I have a BA
21 degree in accounting from Chicago National Louis University.

22 Q Have you received continuing training from the FBI in how
23 to be a translator?

24 A I did. And I received training like translator workshop,
25 a lot of seminars, a lot of training online training. And as

Y. Daniel - direct - Tucker

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1 far as how became linguist for the FBI, I passed a test, FBI
2 test.

3 Q Have you prepared translations for use in court before?

4 A Lots of them.

5 MR. TUCKER: The Government would tender Mr. Daniel
6 an expert witness for the Arabic language pursuant to Rule
7 702.

8 MR. MAHER: No objection.

9 THE COURT: He may testify as to his opinions.

10 MR. TUCKER: May I approach the witness?

11 THE COURT: You may.

12 MR. TUCKER: I'm showing the witness what is marked
13 for identification as Government's Exhibit 709 through 713,
14 and Government's Exhibits 709T through 713.

15 Q Do you see those documents, sir?

16 A Yes, I do.

17 Q What are 709 through 713, just generally?

18 A I'm sorry, what is the question?

19 Q Just generally, what are documents 709 through 713?

20 A Exhibitions.

21 Q Handwritten letters?

22 A Handwritten in English, overwhelming English.

23 Q Do they contain some Arabic?

24 A A few Arabic words, yes.

25 Q So are 709T through 713T, do those contain your

Y. Daniel - direct - Tucker

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1 translations of Arabic to English?

2 A Yes, sir.

3 Q In your opinion, as an expert Arabic linguist, are 709T
4 through 713T complete and accurate translations from Arabic to
5 English of the corresponding Exhibits 709 through 713?

6 A To the best of my knowledge, yes.

7 MR. TUCKER: Your Honor, the Government moves to
8 admit 709T through 713T subject to connection.

9 THE COURT: Same objection, similarly received.

10 (Government Exhibit 709T - 713T were received in
11 evidence.)

12 MR. TUCKER: Thank you, your Honor.

13 Q Two points about those documents, Mr. Daniel. I want to
14 turn your attention to Government's Exhibit 709.

15 I'm not going to publish these at this time, your
16 Honor, just two questions for the witness.

17 The first is the word Takleef, T-A-K-L-E-E-F,
18 appears in Government's Exhibit 709, what does that word mean?

19 A Takleef means burden or hardship.

20 Q Burden or hardship?

21 A Yes.

22 Q Government's Exhibit 711 on the second page of that
23 document, the word Sadaka, S-A-D-A-K-A, appears?

24 A Sadaka means charity or alms to help, charity to help the
25 poor.

Y. Daniel - direct - Tucker

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1 MR. TUCKER: I'm going to show the witness what is
2 already in evidence, Government's Exhibit 101B, so we can
3 publish that to the jurors.

4 Q This is a double-sided document, the second page, what
5 language is that generally?

6 A I'm sorry, which one exhibition?

7 Q On your screen.

8 A On my screen, okay. That's in Arabic, sir.

9 Q Have you had an opportunity to review that Arabic prior
10 to today?

11 A Yes, I did.

12 Q Did you prepare a translation of this?

13 A Yes, yes, I did.

14 Q Would having your translation in front of you assist you
15 in accurately recounting that translation for the jury.

16 A Yes?

17 MR. TUCKER: May I approach the witness, your Honor?

18 THE COURT: You may.

19 BY MR. TUCKER:

20 Q Showing the witness what is marked for identification as
21 Government's Exhibit 3500YD7.

22 A Thank you.

23 Q Is that the translation you prepared of the back side of
24 Government's Exhibit 101B?

25 A Yes, sir.

Y. Daniel - direct - Tucker

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1 MR. RUHNKE: Your Honor, can I confer with
2 Mr. Tucker for a moment?

3 THE COURT: Okay.

4 MR. TUCKER: Pardon me, your Honor, one moment.

5 BY MR. TUCKER:

6 Q Mr. Daniel, if I could ask you to translate the language
7 that appears in Arabic starting from the very top.

8 A Yes, sir. At the beginning first line, Abdullah
9 al-Shami.

10 Q What is the next line?

11 A Next line is, "In charge of external operation," and then
12 it says, "He is from Syria, originally from Syria."

13 Q The next line?

14 A Next line is, it says, "I surrendered myself and he was
15 still there."

16 Q And the next line?

17 A Next line is, "He speaks English and Pashto. And he's
18 between 32 to 35 years of age."

19 Q And the next line, please?

20 A It says, "I met him around the year 1429, Islamic
21 calendar."

22 (Continued following page.)
23
24
25

Y. Daniel - direct - Tucker

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1 A (Answer Continued) And he became in charge after the
2 death of Abdul Hafeez, A-B-D-U-L, H-A-F-I-Z [sic], and then,
3 dash, Saleh al Somali.

4 Q Thank you, sir.

5
6 One last question for you. You mentioned the year
7 1429 on the Islamic calendar. Is that about 2008?

8 A Yes, sir. In the Gregorian calendar, yes, 2008.

9 MR. TUCKER: Your Honor, no more questions.

10 THE COURT: All right.

11 Any cross?

12 MR. MAHER: Just a quick moment, Your Honor.

13 (Pause in proceedings.)

14 MR. MAHER: No cross, Your Honor.

15 THE COURT: All right. You may step down.

16 Thank you very much.

17 THE WITNESS: Thank you, sir.

18 THE COURT: The Government may call its next
19 witness.

20 MR. TUCKER: Your Honor, the Government calls
21 Emmanuel Bakus.

22 E M M A N U E L B A K U S,
23 called as a witness having been first duly
24 sworn/affirmed, was examined and testified as
25 follows:

THE COURTROOM DEPUTY: Please state and spell your
name for the record.

E. Bakus - direct - Mr. Tucker

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1 THE WITNESS: My first name is Emmanuel,
2 E-M-M-A-N-U-E-L; and the last name is B-A-K-U-S, Bakus.

3 THE COURTROOM DEPUTY: Okay, thank you. You may be
4 seated.

5 MR. TUCKER: May I inquire, Your Honor.

6 THE COURT: You may.

7 DIRECT EXAMINATION
8 BY MR. TUCKER:

9 Q Good morning, Mr. Bakus.

10 A Good morning.

11 Q What do you do for a living, sir?

12 A I work as a -- as a translator for the FBI.

13 Q How long have you worked as a translator for the FBI?

14 A Eleven years and a half.

15 Q What languages do you speak?

16 A I am a -- I am a native Arabic speaker and also I speak
17 Assyrian.

18 Q And what languages do you do translation work?

19 A Arabic into English, English into Arabic.

20 Q How did you come to speak Arabic?

21 A I went to school in Baghdad, Iraq.

22 Q Can you tell the jury a little bit about your educational
23 background?

24 A I do have BA in English from the University of Baghdad,
25 and I have MA in general studies from Roosevelt University in

E. Bakus - direct - Mr. Tucker

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1 Chicago.

2 Q Have you received ongoing training in the course of your
3 work as an FBI translator?

4 A Yes. I took many courses on -- on-line, and I took part
5 in -- in the seminars and workshops to improve my translation
6 skills.

7 Q And have you prepared translations for use in court
8 before?

9 A Yes.

10 MR. TUCKER: Your Honor, at this time,
11 the Government would tender Mr. Bakus as an expert linguist in
12 the Arabic language pursuant to Rule 702.

13 MR. MAHER: No objections.

14 THE COURT: He may testify to his opinions.

15 MR. TUCKER: May I approach the witness, Your Honor?

16 THE COURT: Yes.

17 BY MR. TUCKER:

18 Q I'm showing the witness what has been marked for
19 identification as Government Exhibit 714 through 719, as well
20 as Government's Exhibit 714-T through 719.

21 Do you see those documents, sir?

22 A Yes.

23 Q Focusing you first on 714 through 719, are those
24 handwritten letters that you translated?

25 A Yes.

Q All right. And are those letters a mix of English and

E. Bakus - direct - Mr. Tucker

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1 Arabic?

2 A Yes, they are. They are mostly in English and there are
3 some parts in Arabic in all these messages.

4 Q All right. And are 714-T through 719-T, do those
5 exhibits contain your translations --

6 A Yes.

7 Q -- of those documents from Arabic to English?

8 A Yes.

9 Q All right. And in your opinion as an expert Arabic
10 linguist, are 714-T through 719-T complete and accurate
11 translations from Arabic to English of the corresponding
12 Government Exhibits 714 through 719?

13 A Yes.

14 MR. TUCKER: Your Honor, the Government moves at
15 this time to admit Exhibits 714-T through 719-T, subject to
16 connection.

17 MR. MAHER: Objection.

18 THE COURT: Overruled, conditionally received.

19 MR. TUCKER: Thank you, Your Honor.

20 (Government's Exhibit Number 714-T through 719-T so
21 marked and received in evidence.)

22 Q Mr. Bakus, were any of these letters that you reviewed
23 signed?

24 A Yes. They were all signed but -- yes.

25 Q And what language were they signed in?

E. Bakus - direct - Mr. Tucker

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1 A They were signed in Arabic.

2 Q And what was the name that was signed?

3 A Abdullah al-Shami.

4 MR. TUCKER: No further questions, Your Honor.

5 THE COURT: Any cross?

6 MR. MAHER: No, Your Honor.

7 THE COURT: All right. You may step down. Thank
8 you.

9 (Witness excused.)

10 THE COURT: Mr. Tucker, is your next witness short
11 or long?

12 MR. TUCKER: It is going to be a little bit longer,
13 Your Honor. This might be a good time for a break.

14 THE COURT: Okay. Ladies and gentlemen, please come
15 back at 11:35. Do not talk about the case. We'll see you
16 back here shortly.

17 (Jury exits the courtroom.)

18 THE COURT: Okay. Fifteen minutes.

19 (Recess taken.)

20 THE COURTROOM DEPUTY: All rise.

21 (Jury enters the courtroom.)

22 THE COURT: All right. Everyone be seated, please.
23 The Government's next witness?

24 MR. TUCKER: Your Honor, the Government calls
25 John Ross.

J. Ross - direct - Tucker

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1 J O H N R O S S,
2 called as a witness having been first duly
3 sworn/affirmed, was examined and testified as follows:

4 THE COURTROOM DEPUTY: Please state and spell your
5 name for the record.

6 THE WITNESS: My name is John Ross, R-O-S-S.

7 THE COURT: You may inquire.

8 MR. TUCKER: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. TUCKER:

11 Q Good morning, Mr. Ross.

12 A Good morning.

13 Q Where are you employed?

14 A U.S. Department of Justice, U.S. Attorney's Office.

15 Q Here in the Eastern District of New York?

16 A Yes.

17 Q And what is your title?

18 A Criminal investigator.

19 Q How long have you worked as a criminal investigator at
20 the U.S. Attorney's Office in the Eastern District?

21 A Fourteen years.

22 Q What did you do before, sir?

23 A I was a detective at the New York City Police Department
24 for 20 years prior.

25 Q What are your general responsibilities as an investigator
in the Eastern District of New York?

J. Ross - direct - Tucker

914

1 A I'm assigned to the FBI's Joint Terrorism Task Force out
2 of the New York office and responsible for assisting in any
3 investigations being conducted by the JTTF being handled out
4 of the Eastern District of New York.

5 Q Are you familiar with the investigation into the
6 Defendant Muhanad Al Farekh?

7 A Yes.

8 Q And what has been your role in that investigation, if
9 any?

10 A I was asked to assist in analyzing files contained on a
11 recovered USB thumb drive.

12 Q So I'm going to show you what is in evidence under the
13 document camera as Government's Exhibit 700. Do you recognize
14 that item?

15 A Yes.

16 Q And is that the USB drive that you reviewed the content
17 of?

18 A Yes.

19 Q All right. How did you go about reviewing the contents
20 there?

21 A Through a program called FTK.

22 Q Is that also known as Forensic Tool Kit?

23 A Yes.

24 Q Please explain to the jury how you use FTK.

25 A Basically the -- the original thumb drive is forensically

J. Ross - direct - Tucker

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1 copied and then that forensic copy resides in the FTK system
2 and allows the investigators to analyze any of the files that
3 are -- that were found on the thumb drive.

4 Q Would you describe for the jury what the graphical
5 interface looks like when you use FTK; what do you see?

6 A It's basically a -- a tree. If you're -- like a computer
7 tree. If you were looking in your own computer at home, and
8 you know, like My Documents type of thing. And it just breaks
9 out all the files that were found on that device.

10 Q And does FTK allow you to review files that were found in
11 unallocated space?

12 A Yes, it does.

13 Q Would you please remind the jury what unallocated space
14 is?

15 A It's a space that is used by various computer operating
16 systems to drop various -- drop files when they're done being
17 used or while they're being used, and it's not really viewable
18 by the user. It's more of a -- for the operating system
19 itself.

20 Q And do deleted files also sometimes go to unallocated
21 space?

22 A Yes, they do.

23 Q What did you see when you conducted your review on this
24 USB drive on FTK, just --

25 A Many, many files of different types.

J. Ross - direct - Tucker

916

1 Q All right. And did those files include .JPEG, J-P-E-G
2 files?

3 A Yes.

4 Q And those are graphical files?

5 A Yes. They're a photo of scanned files.

6 Q Describe for the jury this process. How did you go about
7 reviewing those materials?

8 A When you would view the unallocated space in the FTK
9 system, you -- it breaks out the files. You could see files
10 that had the ending JPG, JPEG. So knowing that those are
11 generally photos or scans, you could click on them and open
12 them and view what they actually are.

13 Q And has --

14 A As the user would see.

15 Q I apologize for cutting you off.

16 That is what the user would see, is that what you
17 said?

18 A Yes.

19 Q And so in the course of reviewing those files, how did
20 you go about organizing the data?

21 A Basically I reviewed every JPEG file, because they're not
22 in any particular or logical order that the user would place
23 them in if they had a choice.

24 Q And why is that?

25 A Because it's not really for the user. It's for the

J. Ross - direct - Tucker

917

1 operating system. And so if there were two pages in one file,
2 they might not be in the same place. One would be in one
3 location, and the other would be in another location.

4 Q All right. And just so it's clear, was each JPEG a
5 single page?

6 A Yes.

7 Q And generally what were the JPEG images of?

8 A In this case the JPEGs are what looked like handwritten
9 notes that were written on lined paper of various types. So
10 it looked like it was ripped out of a notebook or a calendar
11 book.

12 Q So in the pile of documents in front of you are
13 Government's Exhibits which have been marked for
14 identification as Government's Exhibits 701 through 719.

15 Would you just take a look at those for a moment,
16 please?

17 A (Witness complies.)

18 Q What are those documents generally, Investigator Ross?

19 A These are paper copies of the JPEG file -- some of the
20 JPEG files that were found on the thumb drive.

21 Q Now, in the course of assembling Government's Exhibit 701
22 through 719, did you have to do some organizing to put letters
23 together?

24 A Yes.

25 Q Would you explain to the jury what you did?

J. Ross - direct - Tucker

918

1 A So because there was one page that was contained on each
2 JPEG, some of the -- some of the pages, the person who wrote
3 them wrote on the back of the page and the front of the page.
4 We had to try to match up the back and the front into one
5 document. And the way that we did it is -- well, two ways.
6 One, just a logical process of the letter how it was written.
7 You know, what the next line would have been.

8 And then also when the pages were torn out of
9 whatever the original -- where they originally were, in a
10 notebook or a calendar book, the ripped marks on the -- on the
11 side of the paper were pretty distinct and easily matched up.

12 Q Is it fair to say that took some time?

13 A Yes.

14 Q Were you always able to find each and every page of every
15 letter that you observed among these JPEG files?

16 A No.

17 Q Do Government's Exhibits 701 through 719 fairly and
18 accurately reflect images that were recovered -- some of the
19 images that were recovered from Government's Exhibit 700?

20 A Yes.

21 MR. TUCKER: Your Honor, the Government moves to
22 admit Government's Exhibits 701 through 719.

23 MR. MAHER: And again, it's subject to connection,
24 Your Honor.

25 THE COURT: Overruled. The same judicial admission,

J. Ross - direct - Tucker

919

1 connection.

2 (Government's Exhibit Numbers 701 through 719 so
3 marked and received in evidence.)

4 Q Now, Investigator Ross, did you assist in the preparation
5 of typed versions of these letters?

6 A Yes.

7 Q And just so that it's clear, do the typed versions of
8 these letters incorporate translations of the Arabic in the
9 letters into English?

10 A Yes.

11 Q And then there was English that you just transcribed
12 over?

13 A Yes.

14 Q And are those the Government's Exhibit 701-T through 719,
15 which are also -- 719-T, which are also in front of you there?

16 A Yes.

17 MR. TUCKER: Your Honor, the Government moves to
18 admit Government's Exhibits 701-T through 719-T into evidence.

19 THE COURT: All right. Received over objection.

20 MR. TUCKER: Thank you, Your Honor.

21 (Government's Exhibit Number 701-T through 719-T so
22 marked and received in evidence.)

23 MR. TUCKER: Your Honor, may we publish some of
24 those?

25 THE COURT: Yes.

J. Ross - direct - Tucker

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1 MR. TUCKER: Thank you, Your Honor.

2 BY MR. TUCKER:

3 Q Before we look at some of the documents,
Investigator Ross, were any of these letters signed?

4 A Yes, some of them were signed.

5 Q How were they signed?

6 A Abdullah al-Shami.

7 Q Was there ever a reference to a particular group in
8 addition to the Abdullah al-Shami signature?

9 A Yes.

10 Q What was that group?

11 A Abu Bakr Battalion.

12 MR. TUCKER: That's A-B-U; new word, B-A-K-R;
13 Battalion.

14 Q All right. Investigator Ross, I'm going to direct your
15 attention to now what's in evidence as
16 Government's Exhibit 702. It will appear on your screen as
17 well as well as on the jury's screen.

18 Was this one of the letters you were talking about?

19 A Yes.

20 Q I'm just going to zoom in a little bit, and I'm going to
21 ask you, Investigator Ross, if you would read from the top
22 going down the contents of Government's Exhibit 702? And if
23 you would please read the Arabic translations as well, which
24 are incorporated into the corresponding T, as in "tango,"
25 exhibit?

J. Ross - direct - Tucker

921

1 A Okay. I'm going to refer to the paper, then.

2 Q Thank you.

3 A "In the name of Allah, the most compassionate, the most
4 merciful, peace and blessings be upon the messenger of Allah.
5 My Brother Fiaz, Peace be with you..." --

6 Q Investigator Ross, I would just ask you to slow down a
7 little bit so that our court reporter can get down what you're
8 reading.

9 A "How are you doing, Bro? What's up? I haven't heard
10 from you in ages. What's happening with you? I wanted to
11 thank you for all the help you gave me -- and in
12 parenthesis -- (in building the house to buy the kids things.)
13 Close parentheses -- and lots more. I ask Allah to reward you
14 with the highest levels of paradise, Jannah.

15 Bro, if there is anything I can do for you, don't
16 hesitate to ask. And then in parenthesis (but know my powers
17 are very limited, LOL.) Close parenthesis.

18 I don't have many stories to tell, other than being
19 locked up in my house for almost three months. But I'm pretty
20 sure you have tons. Write back, Bro, and send through regular
21 alquida mail."

22 And then it's signed Abdullah al-Shami.

23 And then below the signature, there's a note, "Do
24 forgive me for any mistake and also for not writing to you
25 sooner." Dated 30 March, 2013.

J. Ross - direct - Tucker

922

1 Q Investigator Ross, I'm going to turn your attention now
2 to what is in evidence as Government Exhibit 705. That's
3 another letter that you put together from the USB drive?

4 A Yes.

5 Q And if I could turn your attention to 705T, if you would
6 read that to the jury, please.

7 A "In the name of Allah, the most compassionate, the most
8 merciful, peace and blessings be upon the messenger of Allah.
9 My Dear Brother Abu Hamza, peace be with you.

10 Please give my Salam to Jaweed and Rayis.
11 Abdullah/Abu Mohammed.

12 How are you doing, Bro? I hope you're back from
13 your trip. I want to tell you that I got a letter and things
14 awhile ago. Bro, in my last letter I asked you where can we
15 send you some things? And then in parenthesis (the things you
16 left here.) Close parenthesis. You didn't write a reply on
17 it. And also in regards to the satellite.

18 Bro, would it be possible -- would it be possible if
19 I give you two email addresses to open the account so that the
20 accounts don't close? If you can't, do you know someone that
21 can do it? And in parenthesis (When I saw you last time,
22 Brother, all us was going to do it. Did he manage to do it?)
23 Close parenthesis.

24 Bro, I don't go to the market anymore and the only
25 way I can send things is through -- and then in parenthesis --

J. Ross - direct - Tucker

923

1 (Ibrahim al-Bunjabi) close parenthesis. So how do I write
2 your name on the letters? I am a little cut off from the
3 world. I see almost nobody, so could you ask Jaweed if he got
4 any new data?

5 My family wrote to yours. And then in parenthesis
6 (They just wanted to know if they got the letter?) Close
7 parenthesis.

8 The last, but not the least, letters move very
9 slowly, so please, Bro, write back as soon as you get my
10 letter. Salams, your brother, Abu Bakr Battalion,
11 Abdullah al-Shami."

12 And then there's an arrow with more writing. "Just
13 write this to the letter and give it to administration
14 miransha. Ibrahim al-Bunjabi." Dated 30 March, 2013.

15 Q Turning your attention now to Government's Exhibit 716.
16 Would you please read this letter to the jury, including the
17 Arabic from 716-T?

18 A "In the name of Allah, the most compassionate, the most
19 merciful, peace and blessings be upon the messenger of Allah.

20 My Dear Brother Muhammad Jamil. Peace, mercy, and
21 all its blessings be upon you.

22 Bro, wassap? What happened? You told me that you
23 would write? Back when you come back from wherever you went
24 to -- and then in parenthesis (two months later and extra, I
25 wrote you a letter.) Close parenthesis.

J. Ross - direct - Tucker

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1 Bro, I'm still waiting for something from your side.
2 In parenthesis, (I don't want to send a USB with the letter
3 inside without knowing for sure you're back.)

4 How secure is it to send emails? Can I write very
5 sensitive things on the letter?

6 Bro, what happened to the other place we talked
7 about?

8 Bro, I'm very sorry to rush you, but it seems that
9 my window of opportunity is closing. I heard that the group
10 is not sending Brother anymore. Do you know anything about
11 this?

12 Please, Bro, don't delay your answer. I am burning
13 inside. I'll be waiting for your reply."

14 And there's a note. "What happened to the
15 documentaries? Are you still recording them?"

16 And then it's signed, "Your Brother
17 Abdullah al-Shami," the 1st of May, 2013.

18 Q Investigator Ross, two question: First, there's a
19 reference to letters on a USB. Do you see that?

20 A Yes.

21 Q Please remind the jury where this letter was found?

22 A On a USB.

23 Q And this date here, you read this as May 5, 2013?

24 A Yes.

25 Q How do you know -- what leads you to that conclusion?

J. Ross - direct - Tucker

925

1 A It's the way the way the dates are generally written,
2 everywhere other than the United States.

3 Q And just so it's clear going back to
4 Government's Exhibit 702 for a moment. The date of this
5 letter was 30/3/2013?

6 A Yes.

7 Q That's March 3rd of 2013?

8 A March 30th, 2013.

9 Q Thank you. March 30th of 2017.

10 I want to show you now Government's Exhibit 710.
11 This is another letter from the USB drive?

12 A Yes, it is.

13 Q Would you please read that letter to the jury?

14 A "In the name of Allah, the most compassionate, the most
15 merciful, Peace and prayers be upon the messenger of Allah.

16 Dear Brother Muhammad Jamil -- and then it's an
17 illegible word -- peace be upon you.

18 Bro, I'm sorry for the messy letter, but I had very
19 little time. I wrote to you a letter, but I don't know how
20 long it will take for it to reach you. So I'm writing another
21 one. Again, it's almost a copy of the one I sent you with
22 small changes, and the Number 1.

23 Change Hajje noor Zaman know knows that I am back to
24 my old house because the brother did a small mistake and
25 brought him to my house. I think that's all the changes. I

J. Ross - direct - Tucker

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1 usually scan all my letters, so I'm sending you the scanned
2 letter.

3 Q All right. Investigator Ross, I'm going to show you now
4 what's in evidence as Government's Exhibit 708. Do you see
5 that?

6 A Yes.

7 Q Before we read that letter this is a two-paged document;
8 is that right?

9 A Yes, it is.

10 Q And you testified earlier that one of the methods that
11 you use to piece JPEGs together was the nature of how the
12 document was torn?

13 A Yes.

14 Q Is that an example there on the right and on the left?

15 A Yes.

16 Q Investigator Ross, would you read
17 Government's Exhibit 708-T, please?

18 A "In the name of Allah the most compassionate, the most
19 merciful, peace and blessing be upon the messenger of Allah.

20 My Dear Brother Zuhar, peace, mercy, and blessings
21 of Allah be upon you.

22 How are you doing, Brother Zuhar? I hope all is
23 well and my letter reaches you in high Iman. I'm sorry that
24 my second letter is extremely late. The truth is I have
25 stopped going to the market for security reasons, and for the

J. Ross - direct - Tucker

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1 longest time ever, I have been trying to set up a way to send
2 and receive letters, which is still a work in progress.

3 Brother Zuhar, there are some -- there is something
4 of great importance that has been preoccupying my mind for
5 quite some time and I seek your guidance/advice on the matter.
6 I really want to travel to Syria. Seeing that the situation
7 here is very confusing, or at the very least, I'm very
8 confused. What I've been seeing in the last -- and then
9 there's an illegible word -- amount of years is for brothers
10 that are working, they are getting killed. And for those who
11 are not doing anything, then why on earth are they still here?
12 And in parenthesis (Just as extra info, I am in the group that
13 is doing absolutely nothing.) Close parenthesis.

14 You might then raise the argument that Afghanistan
15 is right around the corner, but the bitter truth is the fact
16 that the Taliban themselves don't really have a need for us.
17 They would much -- they would much favor a smaller, more
18 symbolic number of fighters from the current amount of foreign
19 fighters currently available.

20 Having said, this is my question is as follows:
21 Should I stay or is leaving the better option and why?

22 My family told me a few days ago that your daughter
23 is making plans to get reunited with her husband. How are the
24 arrangements over there for families? My family were also
25 wondering if they could also travel with your daughter. And

J. Ross - direct - Tucker

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1 in parenthesis (That is if we decide to travel.)

2 I am writing to you all that is in my mind because I
3 fear that letters move very slowly. When I got your letter on
4 how to clean the Bukari, winter had passed. I thank Allah
5 that I learned how to do it in the weeks before spring -- and
6 then in parenthesis (LOL), close parenthesis.

7 Please, Brother, I know for a fact that you have
8 good advice. I'll be waiting for you -- for your reply.
9 Please don't leave me hanging too long. Your Brother,
10 Abdullah al-Shami." Dated 1st of May, 2013.

11 Q Investigator Ross, Government's Exhibit 708 references a
12 Bukari. Do you know what that is?

13 A Yes. It's a traditional wood-burning, coal-type stove
14 that's used for heating and cooking.

15 Q I'm showing you what is in evidence as
16 Government's Exhibit 713.

17 Is this a complete letter, Investigator Ross?

18 A No.

19 Q Is this one of those letters that you mentioned that you
20 couldn't find the full beginning and end?

21 A Yes. It looks like it's missing the beginning.

22 MR. TUCKER: Your Honor --

23 Q -- or Investigator Ross, would you read
24 Government's Exhibit 713 for the jury, please.

25 A "To put the things in it, I now don't have it. I am

J. Ross - direct - Tucker

929

1 waiting for it." And then Number 6, Numeral 6.

2 "As for my house, I am not very happy. I don't feel
3 very secure here. And a few weeks back, there was a drone
4 strike quite close. And from the last time I saw you I hadn't
5 gone to the market." -- and then parenthesis, (It will be
6 almost -- it will almost be six months.) Close parenthesis.

7 Praise be to Allah, the kids are very patient
8 because we live mostly on the basics now. This is the price
9 you pay for security."

10 And the Numeral 7. "I haven't seen Juhayman for the
11 longest time. Things are not really the same after we left
12 from mashood."

13 The Numeral 8. "As for the dentist, I will
14 do..." -- and then there's an illegible word -- "and I will
15 let you know. But are you sure that it's not a burden?"

16 There's a note: "I waited so long for your reply
17 that I ended up writing to Salman. I hope you are not upset."

18 And then, "That is all for now. Your Little
19 Brother, Abdullah." It's dated 28 May, 2013.

20 And then below the date is some more writing.

21 "I got your letter on 27 May, 2013. It takes about
22 a week, and I can send things down once a week. I have a way
23 without going to the market."

24 Q Moving on to Government's Exhibit 712, would you read
25 this document for the jury, Investigator Ross?

J. Ross - direct - Tucker

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1 A "In the name of Allah, the most compassionate, the most
2 merciful, peace and prayers be upon the messenger of Allah.

3 My Dear Brother Zuhar, peace and Allah's mercy and
4 blessings be upon you.

5 I hope my letter reached you in high Iman in good
6 health. Sorry in advance for the short letter. I want to
7 take advantage from the brother that was going down to the
8 market, because sending letters takes some time, but I will,
9 Allah willing, send you another one as soon as I can.

10 I want to comment on a few things in your letter.
11 As for me going there, I am still -- I am still think of it
12 [sic]. Nothing is solid yet, and I wanted more advice from
13 you like is it safe for families? And don't worry, I will
14 never..." -- and then there's an illegible word -- "... of
15 going without permission. It is just not an option to me.

16 As for the situation here, Allah willing, it will
17 change, but I don't think it will in terms of the drone
18 program. I think it's here to stay, unless Allah has other
19 plans.

20 I really thank you for offering to send the letter
21 to the Amir. I knew he was the Amir, but when I asked Brother
22 how to send a letter to the person in charge directly, they
23 told me that no one -- no one person is in charge, so I didn't
24 say anything and I also didn't want to write directly to him.
25 And then in parenthesis (I was worried that he would not like

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1 it.)" Close parenthesis.

2 Q Now, Investigator Ross, you testified earlier that some
3 of these documents were written partially in Arabic. Did you
4 find at least one letter that was written entirely in Arabic?

5 A Yes.

6 Q I'm showing you what is in evidence as
7 Government's Exhibit 701.

8 What language is this, sir?

9 A It's Arabic.

10 Q Can I ask you to read for the jury the translation of
11 Government Exhibit 701-T.

12 A "In the name of Allah the most compassionate, the most
13 merciful, peace and blessings be upon the messenger of Allah.

14 To the virtuous brother Abu 'Abd-al-Rahman
15 Al-Kuwaiti, peace, mercy, and blessings of Allah be upon you.

16 I hope that you, your parent, and children are fine
17 and well when you receive my letter. My Brother Abu
18 'Abd-al-Rahman: I would like to consult with you regarding an
19 issue. The house owner came and told us that he intends to
20 sell the house for he needs the money. He told us he would
21 confirm -- confirm it to us if the house is sold after 20
22 days. However, he told us -- in parenthesis (me and the
23 brother that resides with me) -- close parenthesis -- that if
24 I give him a loan in the amount of -- and then parenthesis --
25 (5 for you) -- close parenthesis -- the supporters told us

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1 that Allah willing he will accept three -- the Numeral 3 --
2 for you.

3 He intends to open a store and support his family,
4 and he told us that after we leave his house, he will return
5 to us the money when we need them on the condition the house
6 is not shelled. In the event the house is not sold and we
7 can't provide him with the funds, he requests to charge us the
8 rent for the house, and this amount is not less than \$5,000
9 per month.

10 So what is your advice regarding this issue?

11 Please return home as soon as possible for time is
12 short, and may Allah bless you.

13 Your Brother, Abdullah al-Shami, June 2nd, 2013."

14 And then there's a note under that. "Note: If we
15 provide him a loan, he will not need to sell the house.
16 Forgive me, O' Brother, for corresponding with you directly
17 for, based on my experience, contacting the Families Committee
18 is very difficult and it takes time."

19 Q So there's a reference in this letter to the Families
20 Committee; is that right?

21 A Yes.

22 Q Now, Investigator Ross, have we read all the letters that
23 you were able to assemble -- reassemble from your review of
24 Government's Exhibit 700 on that USB Drive?

25 A No.

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1 Q Did you also locate a least one handwritten map?

2 A Yes.

3 Q I'm showing you what's in evidence as
4 Government's Exhibit 718.

5 Is that the handwritten map that you found?

6 A Yes.

7 Q I'm going to zoom in a little bit here.

8 What are these words here and here on the left and
9 right of 718?

10 A Mountains.

11 Q What does it say here in the bottom right-hand corner --
12 the bottom left-hand corner? Excuse me.

13 A "We are on the top of High Hill."

14 Q What does it say here in the bottom right of 718?

15 A "My house," and then there's an indication of "door."

16 Q Let's go to the bottom of 718.

17 How is this document signed?

18 A Your younger brother. And then the Arabic is translated
19 into Abdullah.

20 Q What's the date?

21 A 1 July, 2013.

22 Q Investigator Ross, in the course of reviewing the JPEGs
23 on the USB drive, including what are now in evidence as
24 Government's Exhibits 701 through 719, were there references
25 to where the writer was located when he was writing these

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1 letters?

2 A Yes.

3 Q And one of those examples was in
4 Government's Exhibit 705, here at the bottom.

5 What does this read, again?

6 A Administration Miransha.

7 Q And do you know where Miransha is?

8 A Yes.

9 Q Where is it?

10 A It's in the Federally Administrated Tribal Areas in
11 Pakistan.

12 Q Does that also encompass Waziristan?

13 A Yes.

14 Q And is Waziristan explicitly referenced in some of these
15 letters?

16 A Yes.

17 Q All right.

18 MR. TUCKER: Your Honor, may we have a brief
19 sidebar?

20 (Continued on next page.)

21

22

23

24

25

Side-Bar

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1 (The following occurred at sidebar.)

2 MR. TUCKER: Your Honor, that about concludes --

3 THE COURT: You can --

4 MR. TUCKER: Sorry. Your Honor, that about
5 concludes my direct except for 739.

6 I wanted to get a sense of the Court's impression
7 about how he wanted to proceed here. We could -- I can ask
8 the witness --

9 THE COURT: Is there more of a foundation to lay for
10 739 --

11 MR. TUCKER: Well --

12 THE COURT: -- than what this witness has already
13 said?

14 MR. TUCKER: -- I -- I think what I would like to
15 do, Your Honor, is outside the presence of the jury, highlight
16 a couple points in 739 for the Court, which I can specifically
17 tie into the letters the Court's just heard. And so the
18 hearing I think would be a couple minutes long. And then, you
19 know, I could see -- if the Court is willing, I could explain
20 our reasoning, and then if Your Honor is willing, you know, we
21 could either stop or move on.

22 MR. RUHNKE: Well, why don't we send the jury out
23 for lunch early and then we will deal with it?

24 THE COURT: Okay.

25 (Continued on next page.)

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1 THE COURT: Ladies and gentlemen, we're going to
2 send you out for an early lunch. Please come back at 1:15.

3 Remember do not communicate about the case, stay
4 away from media.

5 Have a good lunch. See you in one hour. Thank you.
6 (Jury exits the courtroom.)

7

8 (The following matters occurred outside the presence
9 of the jury.)

10 THE COURT: All right. Everyone be seated, please.
11 Okay. I'll hear from you, Mr. Tucker.

12 MR. TUCKER: So, Your Honor, I know the Court can
13 read the letter in realtime. I would like to elicit a few
14 details about how the letter was found.

15 THE COURT: Okay.

16 MR. TUCKER: And then if the Court would be willing,
17 I'll briefly argue.

18 THE COURT: Okay.

19 (Continued next page.)
20
21
22
23
24
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1 (In open court; 12:18 p.m.)

2 MR. TUCKER: Your Honor, I want to turn your
3 attention to Government Exhibit 729. I may have been saying
4 739.

5 THE COURT: You were, yes.

6 MR. TUCKER: Do you have that document in front of
7 you? If not, I can give that you document.

8 THE WITNESS: I don't think so but I have it in the
9 book for you.

10 Q Investigator Ross, would you tell the Court how you came
11 to locate this document?

12 A In the review of the thumb drive, besides the JPEG files
13 there was also .doc files which generally are like word
14 processing-type documents. So in reviewing all the .doc
15 files, I came across this document.

16 Q And, approximately, how many .doc files did you find on
17 Government's Exhibit 700?

18 A There was ten.

19 Q And were several of these .doc files duplicative?

20 A Yes. They seemed like previous versions or additions of
21 this 729.

22 Q So it's clear, does this relate to sort of autosave as a
23 function?

24 A It's what it looked like.

25 Q Would you explain what you mean by that?

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1 A It seemed like as the main document was being written, it
2 wasn't written all in one time period. And while the person
3 was typing, it was probably being saved, and that's when it
4 ended up on the unallocated space. It was being saved
5 automatically by the system.

6 THE COURT: You got that from the metadata?

7 THE WITNESS: No.

8 THE COURT: How do you know that?

9 THE WITNESS: No, that's what appeared. Because the
10 different versions of the document looks like it was getting
11 longer and longer additions.

12 THE COURT: Okay.

13 MR. TUCKER: Your Honor, that's all the questions I
14 would have for the witness. I can either through Investigator
15 Ross's testimony highlight the few specific pieces of language
16 that I think are probative on the point. I can explain to the
17 Court whatever your Honor wants.

18 THE COURT: It's in evidence, so why don't you just
19 go ahead and explain it. I don't need to hear the witness.

20 MR. RUHNKE: It's only in evidence for this hearing.

21 THE COURT: That's right. I have it in front of me.
22 The question is, do we need to the witness to leave?

23 MR. TUCKER: That might be a better approach. I
24 think I can --
25

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1 THE COURT: Why don't you step down and enjoy your
2 lunch. We'll see you after lunch.

3 THE WITNESS: Sure.

4 (Witness leaves the witness stand.)

5 MR. TUCKER: Your Honor, I'm not looking to belabor
6 the point here. There are just a couple of specific things
7 about this letter that it's the Government's position are
8 unique and make it clear that the author of this document is
9 the same as the person who is writing the letters.

10 The first thing is there are repeated references to
11 top al-Qaeda leadership and the writer continues about that
12 leadership. And that language echos what's in evidence as 717
13 where the letter reads, "While reading the letter I came to
14 understand."

15 THE COURT: Wait.

16 MR. TUCKER: I apologize, Judge.

17 THE COURT: Let me get 717.

18 MR. TUCKER: The dash T version of 717. I can put
19 it up on the document camera if that's easier.

20 THE COURT: No, I'd rather have it in front of me.

21 Okay. Show me in 717 what you think is parallel in
22 729?

23 MR. TUCKER: So the fourth line of 717, it's the
24 same sentence. "While reading your letter, I came to
25 understand that the solution to our messed up situation lies

1 on how the leadership tackles it."

2 So 729 this is the writer's discussion about
3 specific things that the leadership is doing and then is
4 failing to do, and the problems with how the leadership is
5 handling that.

6 THE COURT: Okay.

7 MR. TUCKER: The next point, Judge, continuing with
8 729 at the bottom of the first page.

9 THE COURT: Yes.

10 MR. TUCKER: There's a portion at that reads, "After
11 you left us, I was told several months later to leave the work
12 I was in and to move to the fighting."

13 And I'm sure it was apparent to the Court at this
14 point, and hopefully to the jury, the Government's witness,
15 Mr. Murad, testifies that in 2010 Abdullah al-Shami is in
16 external operations. Then we have letters from 2013 where he
17 says he's in the Abu Bakr Brigade. And it was explained by
18 Mr. Murad that Abu Bakr is a fighting group.

19 That's a very similar timeline to what the evidence,
20 which is the testimony plus the handwritten letters, would
21 suggest here. It also -- I just want to continue to read from
22 729, this language makes sense if they're talking about
23 somebody who is working in the very secretive external ops
24 group. So he says, "Which I did and around the same time I
25 got married."

1 MR. RUHNKE: What page, please?

2 MR. TUCKER: I'm still on the bottom of 729.

3 THE COURT: First page.

4 MR. TUCKER: First page.

5 "At first, I was advised by so many brothers
6 including my direct Amir to run my life normally. My Amir
7 told me from security just to leave security."

8 And then skipping down on that same page to the
9 second-to-last line: "I found out that by previous history, a
10 person in charge of sensitive work had left me and it started
11 to travel," I'm continuing on to the second page, "it started
12 to travel all over the market and people then started to put a
13 picture to a name."

14 Now, continuing on in the second page, and this is
15 really throughout the document, there are numerous references
16 to the fact that the writer of 729 can't go to the market any
17 more because of security concerns. There are discussions
18 about traveling to Syria, I understand your Honor's concerns
19 about those. I can highlight the language from the
20 handwritten letters, but I'm sure the Court has that.

21 This is the one point I wanted to make.

22 On the second page of 729, right in the middle,
23 there's language that says, "The house is not safe and
24 recently the owner of the house asked for his house back. In
25 such a situation, the standard procedure would be to write to

1 your direct superiors, which I did," and directing the Court's
2 attention to the last letter that Investigator Ross read which
3 is 701, that's exactly what that letter is about.

4 The writer explains, "The house owner came and told
5 us that he intends to sell the house for he needs money." And
6 in that same letter in the note, your Honor, at the bottom he
7 writes, "Forgive me O' brother for corresponding with you
8 directly, for based on my experience contacting the Family
9 Committee is very difficult, it takes time."

10 It's clear from that letter that the writer of 701
11 is corresponding with someone senior in the organization about
12 the loss of the house where he was residing.

13 Now, Judge, if that's not proof that this letter was
14 written by the defendant, it's an extremely remarkable
15 coincidence, and as the Court knows, the threshold here for
16 admissibility is low. And I think that gets us over that
17 threshold.

18 The defense is free to argue that the letter is
19 unsigned. We have no handwriting evidence, but given this
20 context, given that it's found in the same location and given
21 that very unique topic, I think that's enough, your Honor.

22 THE COURT: I'll hear from defense.

23 What about the sale of the house carrying forward
24 from 729 to 701?

25 MR. RUHNKE: Right.

1 Your Honor, the situation is -- the similarities are
2 so minimal that to draw the inference that this could be
3 presented to the jury as a document authored by the same
4 person who authored the handwritten letters is simply not
5 tenable.

6 THE COURT: So the question is should the Government
7 be able to argue the point? It's not as if I'm determining
8 that the connection is there, the question is: Does it meet
9 the low threshold for drawing the connection so that you both
10 can argue to the jury whether it's there.

11 MR. RUHNKE: I think once your Honor admits it, once
12 the evidence -- once the document is admitted into evidence,
13 it becomes just too far down in the weeds to make the argument
14 as to what document has actually been authenticated. I don't
15 know if the jury is going to pick up on the idea that once
16 it's been admitted -- there are so many things about this Word
17 document -- there's references in 729 to about the house not
18 being safe. In 701, there's discussion of a house being sold.
19 There's nothing in here that's, you know, a house being sold,
20 a house not being safe, grousing about the leadership is
21 common in any organization in common experience.

22 THE COURT: I'm focusing on, "The owner came and
23 told us that he intends to sell the house for he needs money.'
24 And then I'm looking at 729 and it pretty much says the same
25 thing, right?

1 MR. RUHNKE: There's a similar discussion. But to
2 say that it is similar enough that a jury could say, well,
3 this must have been written by the same person is,
4 respectfully, just too far a leap even under the minimal
5 standards of authentication permitted by the Federal Rules.

6 THE COURT: Okay. Let me think about it over lunch.

7 MR. TUCKER: Your Honor, one quick response to
8 Mr. Ruhnke's point about the house not being safe. Of course,
9 701 notes that the house can't be sold if it's shelled.

10 THE COURT: Right.

11 MR. TUCKER: Thank you, your Honor. I appreciate
12 the Court hearing me out on that.

13 THE COURT: Okay. See you soon.

14 MR. RUHNKE: What time do you want us about?

15 THE COURT: I don't think it will take me more than
16 30 seconds to rule, so be back. 1:15 is fine.

17 MR. RUHNKE: I was wondering if we were getting the
18 full hour, that's all.

19 (Defendant exits from courtroom at 12:30 p.m.)

20 (Luncheon recess taken.)

21 (Continued on the next page.)
22
23
24
25

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1 (In open court; 1:17 p.m.)

2 COURTROOM DEPUTY: All rise.

3 THE COURT: Okay. Be seated, please.

4 I'm going to reject the Government's argument -- do
5 you want me to wait for him before I reject the Government's
6 argument?

7 MR. MAHER: We would like him to be here.

8 THE COURT: Is that a waiver of his appearance?

9 MR. MAHER: He's coming right out, Judge.

10 (A brief pause in the proceedings was held.)

11 (Defendant enters the courtroom at 1:23 p.m.)

12 THE COURT: All right. The defendant has entered.

13 I'm going to reject the Government's proffer of 729.

14 Having read it alongside the handwritten letters in their
15 entirety, they strike me as written by two different people.

16 The tone really has very little in common and the
17 content that the Government relies on, as I stated previously,
18 I think is very general and does not really convince me that
19 the jury would be doing anything other than speculating if it
20 were to consider that letter to be authentic.

21 The closest the Government got was the reference to
22 the disposition of the home by the seller -- by the owner.

23 But even as to that reference, the letter to the
24 highers-up referred to the owner taking the house back, not
25 selling the house could have been a shorthand, maybe, but I

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1 think it's speculative so I'm going to sustain the objection
2 to the letter.

3 MR. TUCKER: Thank you, your Honor.

4 THE COURT: Let's have the jury.

5 (Witness takes the witness stand.)

6 COURTROOM DEPUTY: Jury entering.

7 (Jury enters courtroom at 1:25p.m.)

8 THE COURT: All right. Be seated, please.

9 Welcome back, ladies and gentlemen.

10 Does the Government have anything further of this
11 witness?

12 MR. TUCKER: No further questions, your Honor.

13 THE COURT: All right. Cross-examination.

14 MR. RUHNKE: Thank you.

15 CROSS-EXAMINATION

16 BY MR. RUHNKE:

17 Q Good afternoon, Mr. Ross.

18 A Good afternoon, sir.

19 Q Just a couple of questions for you, maybe more than two,
20 but a few questions for you this afternoon.

21 You talked about this thumb drive on as
22 containing -- and your search going into unallocated space on
23 the disk; is that correct?

24 A Yes.

25 Q All right. And you know from your training that when we

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1 delete a file, say, on a laptop, all we do is break the link
2 to the file, but the actual data stays in the unallocated
3 space; correct?

4 A Until it's overwritten.

5 Q And you can certainly wipe unallocated space with certain
6 programs that overwrite the unallocated space, but in this
7 case it wasn't done; correct, it just remained there?

8 A I'm not aware of that being done.

9 Q The files were there is my point; correct?

10 A The files that we found were there. There could have
11 been other ones that have been deleted.

12 Q True.

13 And anything could have happened to it, but you
14 found the files that you found; correct?

15 A Correct.

16 Q How many files did you find, roughly?

17 A In the thousands.

18 Q Okay. And using the FTK, Forensic Toolkit, you were able
19 to capture the pages, the JPEG files?

20 A Yes.

21 Q And JPEG is basically an imaging file; correct?

22 A Correct.

23 Q You can create a JPEG file from taking a photograph of a
24 document with a digital camera; correct?

25 A Correct.

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1 Q You can get a JPEG file by scanning into a JPEG format;
2 correct?

3 A Yes.

4 Q And you can take PDF documents, portable
5 document -- whatever it stands for -- I don't think you can
6 create that into a JPEG; correct?

7 THE COURT: I don't think it stands for anything.
8 PDF has assumed a meaning by itself.

9 MR. RUHNKE: Yes. So I've forgotten what it
10 actually means. I think it stands for Portable Document
11 Format.

12 Q But in any event, you can take PDF files and convert them
13 into JPEG files; correct?

14 A Yes.

15 Q So there's any number of ways these files could have been
16 produced; correct?

17 A Yes.

18 Q And of the thousands of files that you found on the thumb
19 drive, how many did you assemble into your presentation today?

20 A Just the exhibits here.

21 Q So 40 or 50 pages maybe, tops?

22 A Yes.

23 Q Okay. You made reference under a question from the
24 prosecutor earlier to the fact that there was a reference in
25 the letter to a thumb drive and lo and behold these were found

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1 on a thumb drive; correct?

2 A Yes.

3 Q Thumb drives are an extremely common way of transporting
4 data, am I correct?

5 A Yes.

6 Q And you, yourself, have no personal knowledge as to where
7 this thumb drive was originally located and taken into the
8 custody of the Government at some point; is that correct?

9 A That's right.

10 MR. RUHNKE: I have nothing further.

11 THE COURT: Any redirect?

12 MR. TUCKER: No, your Honor.

13 THE COURT: You may step down.

14 (Witness leaves the witness stand.)

15 THE COURT: Next.

16 MR. TUCKER: Your Honor, the Government calls
17 Gabriel Watts.

18 (Witness takes the witness stand.)

19 COURTROOM DEPUTY: Please stand and raise your right
20 hand.

21 G A B R I E L W A T T S, called by the Government, having
22 been first duly sworn/affirmed, was examined and testified as
23 follows:

24 THE WITNESS: I do.

25 COURTROOM DEPUTY: Okay. Please state your full

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1 name for the record.

2 THE WITNESS: Gabriel Watts. G-a-b-r-i-e-l. Last
3 name, W-a-t-t-s.

4 COURTROOM DEPUTY: Thank you. You may be seated.

5 THE COURT: Please proceed.

6 MR. TUCKER: Thank you, your Honor.

7 DIRECT EXAMINATION

8 BY MR. TUCKER:

9 Q Good afternoon, Mr. Watts.

10 A Good afternoon.

11 Q Where do you work, sir?

12 A I work at the FBI laboratory in the Questioned Documents
13 Unit.

14 Q How long have you worked in the Questioned Documents
15 Unit?

16 A 18 years.

17 Q What is your title?

18 A I'm a Forensic Document Examiner.

19 Q What does that mean to be a Forensic Document Examiner?

20 A I conduct forensic examinations on document evidence such
21 as threat letters, extortion letters, identity documents
22 ultimately to determine their origin or authenticity.

23 Q Does that -- among the things you do is one of the
24 techniques that you use called handwriting comparison?

25 A Yes, handwriting comparison is probably the majority of

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1 the type of examinations that we do.

2 Q Just very generally, what is handwriting comparison?

3 A Handwriting comparison is a side-by-side comparison of
4 questioned writing and known writing, ultimately determine if
5 a known writer prepared the questioned writing.

6 Q What is your educational background?

7 A I have a Bachelor of Arts from Old Dominion University
8 and nine postgraduate credits from George Washington
9 University.

10 Q And, as a forensic document examiner for the FBI, have
11 you received any specialized training?

12 A Yes.

13 Q Please tell the jury a little bit about that.

14 A Upon entering the Questioned Documents Unit at the FBI
15 lab, we entered into a two-year full-time training program and
16 this included formalized classroom instruction, the completion
17 of practical problems, completing quizzes and tests.

18 I completed approximately 200 cases under the
19 supervision of qualified document examiners and then
20 ultimately we had to pass an oral and written exam.

21 Q And did that process also include a Forms Blindness Test?

22 A Yes, I did.

23 Q Please explain to the jury what that is?

24 A A Forms Blindness Test is a test to make sure that we can
25 differentiate between minutia and angles and in shapes.

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1 Q Did you pass that test?

2 A Yes.

3 Q Do you hold any certifications as a result of this
4 specialized training?

5 A Yes, I received a certificate from the FBI which
6 qualifies me to testify as a forensic document examiner.

7 Q Have you, yourself, trained other individuals in the
8 field of questioned documents?

9 A Yes.

10 Q Are you a member of any professional organizations?

11 A Yes.

12 Q Please tell the jury.

13 A The Mid-Atlantic Association of Forensic Scientists and
14 the Document Security Alliance.

15 Q Are you periodically tested for proficiency in your
16 field?

17 A Yes, I am.

18 Q How are you tested?

19 A I'm tested twice a year by a third-party testing company
20 called Collaborative Testing Services. And every year, we get
21 tested in general forensic document examination and once in
22 handwriting comparison.

23 Q Have you previously testified as an expert?

24 A Yes, I have.

25 Q About how many times?

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1 A 18.

2 Q And in what subject have you testified as an expert?

3 A Both general questioned document examination and
4 handwriting comparison.

5 Q What are some of the courts that have to allowed you to
6 testify as an expert?

7 A Both federal and state and one international.

8 Q When did you testify as an expert most recently?

9 A Last week.

10 Q Do you always testify on behalf of the prosecution or the
11 Government?

12 A No.

13 Q Please explain.

14 A Well, when I conduct my examinations, the results are
15 what they are. So it doesn't always support the prosecution.
16 Twice I've testified for the defense.

17 MR. TUCKER: Your Honor, at this time, the
18 Government tenders Mr. Watts as an expert in handwriting
19 examination and comparison.

20 MR. RUHNKE: No challenge to his qualifications.

21 THE COURT: All right. He may testify as to his
22 opinions.

23 Q Did there come a time when you were asked to conduct a
24 handwriting comparison in this case?

25 A Yes.

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1 Q What kinds of documents did you examine, just generally?

2 A I examined handwritten letters.

3 Q In the pile of documents in front of you, are what are in
4 evidence as Government's Exhibits 701 through 719.

5 Do you see those documents?

6 A Yes.

7 Q And are those the documents that you examined?

8 A Yes, those are the questioned documents that I examined.

9 Q And when you say, "questioned documents," please explain
10 to the jury what you mean by that?

11 A Questioned document is a document where there is some
12 question surrounding it. In this case, the question was who
13 wrote these documents.

14 Q Did you work with known exemplar documents as well?

15 A Yes, I did.

16 Q And what were those documents just very generally? How
17 did you receive those?

18 A Those were received from the investigation team and they
19 were letters from the defendant.

20 Q Okay. And did those documents include Government's
21 Exhibit 732 that's before you there?

22 A Yes.

23 MR. TUCKER: Your Honor, the Government moves
24 Government's Exhibit 732 into evidence.

25 THE COURT: All right. It's received over

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1 objection.

2 (Government's Exhibit 732 was received in evidence
3 as of this date.)

4 MR. RUHNKE: Your Honor, there's no objection to
5 732. I think is the document in question the Bureau of
6 Prisons document?

7 Your Honor, we're asking you to give a limiting
8 instruction at this point on this particular document.

9 THE COURT: Yes. Ladies and gentlemen, this
10 document is being introduced to permit this witness to draw
11 conclusions between the unknown documents and this particular
12 exemplar document that he's looking at.

13 The content of the document is irrelevant and should
14 be disregarded by you in your deliberations. You may gather
15 from the document that it shows that the defendant is or was
16 in custody at some time. It is very common when cases are
17 brought involving charges like we have here for a defendant to
18 be arrested and to be in custody, so disregard anything about
19 that it has nothing to do with the defendant guilt or
20 innocence.

21 Please proceed.

22 MR. TUCKER: Thank you, your Honor.

23 EXAMINATION BY

24 Q MR. TUCKER: (Continuing.)

25 Mr. Watts, just so it's clear, Government's Exhibit 732
was just one of numerous known exemplar documents that you

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1 used?

2 A Yes.

3 MR. TUCKER: Your Honor, at this time, the
4 Government would move to read a stipulation into evidence.

5 THE COURT: All right.

6 Ladies and gentlemen, a stipulation is an agreement
7 between attorneys that some fact is true or that some document
8 is genuine. If they so stipulate, then you are obligated to
9 obey that stipulation and take that fact as true or that
10 document as genuine.

11 MR. TUCKER: May I publish the stipulation, your
12 Honor?

13 THE COURT: Yes.

14 MR. TUCKER: So, for the record, we've marked this
15 stipulation as Government's Exhibit 3001 and I will read it
16 for the record.

17 It is hereby stipulated and agreed by and between
18 the United States of America by Assistant United States
19 Attorneys Richard M. Tucker, Douglas M. Pravda, and Saritha
20 Komatireddy and the defendant, Muhanad Al Farekh, by his
21 attorneys, Sean Maher and David A. Ruhnke, Esq., that the
22 parties hereby stipulate that the known exemplar documents
23 used by FBI Document Examiner Gabriel Watts in his handwriting
24 comparison analysis including, but not limited to,
25 Government Exhibit 732 were written by the defendant.

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1 And it's signed today's date and it's signed by
2 counsel for the parties.

3 And, your Honor, at this time, the Government moves
4 Government's Exhibit 3001 into evidence.

5 MR. RUHNKE: Without objection.

6 THE COURT: Received.

7 MR. TUCKER: Thank you.

8 (Government's Exhibit 3001 was received in evidence
9 as of this date.)

10 Q Mr. Watts, how generally, is a handwriting comparison
11 conducted?

12 How do you conduct them?

13 A A handwriting comparison, again, is a side-by-side
14 comparison.

15 So when you think about learning to write, it's --
16 you start out with an imitation phase. You start in the
17 imitation phase you're copying letters from a copybook or the
18 alphabet above the chalk board and you are trying to create
19 the character, you're not thinking as much about what you want
20 to say, you're just copying those characters down.

21 And during the course of the learning to write, you
22 move to a fixation stage where, based on your own
23 neuromuscular abilities, you start to incorporate your own
24 individual characteristics into learned writing. Those
25 characteristics are the characteristics when I look for when I

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1 conduct a comparison and I go through what's called an ACE-V
2 methodology.

3 Q Could you explain what you mean by an ACE-V methodology?

4 A ACE-V is an acronym that stands for Analysis, Comparison,
5 Evaluation and Verification.

6 So, in the analysis stage, I have both the
7 questioned and the known writing and I'm analyzing both
8 writings to determine suitability for comparison. So there
9 may not be enough writing, insufficient quantity, to conduct a
10 meaningful comparison, or there might be obliterated writing
11 that would prevent comparison.

12 So, in that analysis stage, I'm generally making
13 sure that I conduct the actual comparison which is the next
14 stage, and that's when I'm looking for characteristics that
15 are in common or not in common between the two bodies of
16 writing and I'm making those notations.

17 And then once I'm finished with that comparison, I
18 move on to the evaluation stage and that's when I evaluate my
19 notes and I come to one of five conclusions in the FBI
20 laboratory.

21 Q What are those conclusions?

22 A The first conclusion is identification which means the
23 known writer did prepare the questioned writing, and there are
24 no fundamental differences between the two writings and
25 there's no limitations between the two writings.

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1 If there is some limitation, the next conclusion
2 that we can come to is slightly below, or below the definitive
3 conclusion of identification, and that is that the known
4 writer may have prepared the questioned writing. And
5 generally, that is because there is at least one limitation
6 that prevents a definitive determination.

7 The next conclusion is just straight, no conclusion,
8 moving down the scale. And that's if there is not enough or
9 there's too many limitations to be able to determine one way
10 or the other whether or not a known writer prepared the
11 questioned writing.

12 And moving down, we can eliminate the writer if we
13 have enough known writing to determine a range of variation.
14 And if there is some limitation there, we can say that the
15 writer may not have prepared the questioned writing.

16 Q Is there a peer verification process that you employ when
17 you conduct your analysis?

18 A Yes. That is part of the verification process.

19 Q Someone else looks at your work?

20 A Yes.

21 Q Was that process followed in this case?

22 A Yes, it was.

23 Q Did you observe distinctive traits in the known exemplars
24 written by the defendant that were also present in the
25 handwritten letters, 701 through 719?

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1 A Yes, I did.

2 Q What traits did you observe, just generally?

3 A Generally, there, again, the characteristics that I'm
4 looking for are connection strokes, spacing, character
5 formation, baseline conformity which is where the writing lies
6 on the real or imaginary baseline by which a writing rests
7 these are.

8 There are some of the characteristics that I look
9 for, and I did find similarities with those characteristics
10 between the questioned and the known writing.

11 Q Before we move to the documents, Mr. Watts, were some of
12 these documents written in a language other than English?

13 A Yes.

14 Q Are you able to conduct handwriting comparison on
15 non-English words?

16 A We can only conduct handwriting comparisons on
17 Latin-alphabet-based languages.

18 Q One last other question for you.

19 Does your analysis incorporate word choice or syntax
20 or sentence structure or anything like that?

21 A No.

22 Q What do you focus on?

23 A Just the characteristics.

24 Q So if I can use the document camera to show the jurors
25 what's in evidence as Government's Exhibit 712.

G. Watts - direct - Tucker

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1 Is this one of the documents that was one of the
2 questioned documents that you were asked to conduct a
3 comparison on?

4 A Yes.

5 Q I'm also showing you what's in evidence now as
6 Government's Exhibit 732. This was one of the known exemplars
7 from the defendant?

8 A Yes. That is correct.

9 Q So just focusing you on 732 and 712 for a moment, and I
10 want to direct your attention to the word "permission" which
11 appears in both documents?

12 A Yes.

13 Q In the course of your analysis, did you observe any
14 similarities between how the word "permission" was written in
15 Government's Exhibit 712 and Government's Exhibit 732?

16 A Yes, I did.

17 Q Please tell the jury.

18 A Some of the characteristics here are in common between
19 these two words include the lower case E. Note the angle of
20 the eyelet is approximately at the 2 o'clock angle. That same
21 angle was observed in both the questioned and the known words
22 "permission."

23 Also note the formation of the lower case R, the
24 very next character, and how there is a lack of a retrace
25 between the descending portion and then the arched portion.

G. Watts - direct - Tucker

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1 It almost looks like it could be a lower case V. That same
2 formation was observed in both words "permission" from the
3 questioned and the known.

4 Also note the connection stroke between the I dot
5 between the I and the S, and there's that pen drag that goes
6 from not only from within the I, there's no pen left to create
7 that I dot, and also from the I dot to the S. And that is
8 another characteristic in common that I observed between those
9 two words.

10 Q Were these the only characteristics in common that you
11 observed between the questioned documents and the known
12 documents authored by the defendant?

13 A No, there were many more.

14 Q Did you prepare a presentation showing other similarities
15 in preparation for your testimony here today?

16 A Yes, I did.

17 Q I want to direct your attention to the document that's in
18 front of you that's been marked for identification as
19 Government Exhibit 2003-A.

20 Do you see that?

21 A Yes.

22 Q What is that document generally?

23 A This is a chart that I created that has portions of both
24 the questioned and the known writing that I've positioned side
25 by side to demonstrate some of the characteristics that I

G. Watts - direct - Tucker

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1 observed in common between the questioned and the known
2 writing.

3 MR. TUCKER: Your Honor, the Government moves to
4 admit Government's Exhibit 2003-A into evidence.

5 MR. RUHNKE: No objection.

6 THE COURT: Received.

7 (Government's Exhibit 2003-A was received in
8 evidence as of this date.)

9 MR. TUCKER: May we publish, your Honor?

10 THE COURT: Yes.

11 Q So continuing on the document camera for a moment longer,
12 I'm showing you the first page of Government's Exhibit 2003-A.

13 Just so it's clear for the jury, the questioned
14 documents, what does that mean? What are the questioned
15 documents?

16 A The questioned documents are the documents that I was
17 asked to determine who the writer was in that writing.

18 Q And the known documents, what are those?

19 A The known documents are the writing that were submitted
20 to me from the defendant.

21 Q So this first example on the right comes from
22 Government's Exhibit 732; is that right?

23 A Yes.

24 Q And the words "from the," and that's also from
25 Government's Exhibit 712 and 713?

G. Watts - direct - Tucker

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1 A Yes.

2 Q Showing you "from the," that's the word here and there,
3 those two words here on Government's Exhibit 732; is that
4 right?

5 A Yes.

6 Q Ms. Clarke, would you mind switching us over to the
7 podium laptop?

8 Moving on to the second page, Mr. Watts. What
9 similarities did you observe between the way that "from the"
10 appeared in the questioned documents, those handwritten
11 letters, and the known exemplars from the defendant?

12 A Again, these are some characteristics that I observed
13 throughout the questioned writing. And so, I this took this
14 word combination "from the" because it was very common. The
15 F, the lower case F combination, and also the word "the."

16 So beginning with the "from" from Government's
17 Exhibit 712. Note the formation of that lower case F and how
18 there is a lean slightly forward. There is an eyelet that is
19 slightly narrow, and that same characteristic was observed in
20 the known examples in the word "from." There is also a
21 crossbar that connects from the F into the lower case R that
22 was observed in the known examples of that same word.

23 Q Let me pause you for one second.

24 You talk about the crossbar, you are referring to
25 this area here, the line between the F and the R?

G. Watts - direct - Tucker

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1 A Yes.

2 Q Please continue.

3 A So one of the other characteristics that I looked for in
4 the comparison is within writer variation and the question
5 also appears in the known.

6 Q That's within writer variation?

7 A Right, a variant way of creating the same character.

8 So here in the first example of the word "from,"
9 from the questioned document from Government's Exhibit 712,
10 you can see how the arches of the M are very smooth especially
11 the second M or the second arch of the M, and that's in
12 contrast to the angular arch of the M in the word "from" in
13 Government's Exhibit 713.

14 And that same variation of creating that letter was
15 observed in the known writing. You can see, as I have pointed
16 out, with the arrow from Line 9 and Line 12. And that same
17 character, the smooth and angular creation of that second arch
18 of the M.

19 Q Does within writer variation provide another
20 characteristic that you can look for in questioned documents
21 to determine whether they were authored by the author of the
22 known documents?

23 A Yes.

24 Q Please explain.

25 A So everyone -- no one writes exactly the same way twice.

G. Watts - direct - Tucker

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1 That's one of the principles of handwriting examination. No
2 one -- no two people write exactly the same and no one writes
3 exactly the same way twice; however, we do have these
4 characteristics that we incorporate into our handwriting that
5 make our handwriting recognizable as our own attributable to
6 ours. That's why when you see someone's handwriting and you
7 recognize it, that's because of that set of individual
8 characteristics that are incorporated into their writing that
9 allows you to recognize it.

10 In this case, because of that within writer
11 variation, there might be or two or a few different ways of
12 writing the same character, and in this instance, this example
13 was the letter M.

14 Q Now, you have arrows over the TH combinations here.
15 What's the significance of that?

16 A Yes, here in the questioned be writing, in both instances
17 of the word "the," the connection stroke from the T into the H
18 was observed also in the same words in the known writing from
19 Government's Exhibit 732.

20 Q Moving on to the third page of Government's Exhibit
21 2003-A.

22 This is the word "right," which appears in the
23 questioned documents and also the known documents authored by
24 the defendant; is that right?

25 A Yes.

G. Watts - direct - Tucker

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1 Q Did you observe any similarities in these letters and how
2 they were written in those documents?

3 A Yes, I did.

4 Q Please explain?

5 A Beginning with the word "right" from Government's Exhibit
6 711, the questioned word "right," you can see that the writer
7 did not pick the pen up before creating that I dot creating
8 the lower case I.

9 So there's a connection stroke from the lower
10 portion of the lower case I up until the I dot, which was also
11 observed in the known words.

12 Also note the connection stroke between the lower
13 case G as it curves up and joins the lower case H at the top
14 of the descending portion. And the descending portion or the
15 vertical line of the H stops just short of the baseline in
16 this particular word.

17 And note the crossbar of the T and how it only
18 appears on the right side of the vertical portion of the T.
19 All of these characteristics were observed in the words right
20 from the known writer.

21 Q Mr. Watts, what is copybook style?

22 A Copybook style is basically the copybook. It's a model
23 of handwriting that is given to students of handwriting to try
24 and emulate, trying to copy. It's a style that will be --
25 that teaches you, basically, teaches you how to write.

G. Watts - direct - Tucker

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1 Q And how does copybook style factor into your handwriting
2 comparison process?

3 A Well, again, as we move into that fixation period, we
4 move away from, based on our own neuromuscular abilities,
5 we're going to incorporate our own deviation from that
6 copybook style. And that's going to depend on speed, the
7 formality of the letter that you're writing.

8 So no copybook is going to teach you to write a
9 crossbar only on the right-hand side of the vertical portion
10 of the T.

11 Q Moving on to the fifth page of your presentation. The
12 word "letter" and "letters" appear in the handwritten letters
13 and also in the known exemplars from the defendant; is that
14 right?

15 A Yes.

16 Q And did you observe similarities in how those words were
17 written in the questioned and known documents?

18 A Yes, I did.

19 Q Please explain.

20 A This word "letter" actually appeared fairly frequently
21 throughout the questioned writing. And one distinct
22 characteristic that I observed in this particular word was,
23 again, the double T combination here. And there is a
24 connection stroke between the first T and the second T, and
25 it's from that initial crossbar of the first T up to the top

G. Watts - direct - Tucker

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1 portion of the second T. And that connection stroke was
2 observed and the known words "letter" and "letters" as well.

3 Also, there was a slight leaning at the very top of
4 the second T that I also observed as you can see on the top
5 example of the word "letter" from the known writing.

6 On that same example of the word "letter" from
7 Government's Exhibit 709. Note the elongated arch of the
8 lower case R and it also appeared down in the word "letter"
9 from Government's Exhibit 705 from Line 6. That elongated
10 arch portion of the character was observed in the known word
11 letter as well as indicated on the top example.

12 Some other characteristics that I observed from that
13 word include the height relationship between the lower case L
14 and the lower case Ts as indicated here from Government's
15 Exhibit 705. Note how it's slightly lower than the lower case
16 Ts and that same height relationship was observed in a known
17 writing.

18 And then there's also a connection stroke between
19 the lower case E that curves up into the first T. That
20 connection stroke was observed on these second and third
21 examples of the known word "letter," or "letters."

22 There's also a beginning stroke to the lower case E
23 that I observed that touches the second T that I observed in
24 the final example of the word letters from a known writing.

25 Q Moving on to the seventh and eighth pages of your deck.

G. Watts - direct - Tucker

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1 The word "things" and the word "this" appear in the
2 known exemplars. And the word "things" appears in the
3 questioned documents?

4 A Yes.

5 Q Did you observe any similarities of how those letters and
6 words were written?

7 A Yes, I did.

8 Q Please tell the jury.

9 A If you note in the "things" from Government's Exhibit
10 705, you can see how the writer did not lift the pen when
11 connecting the I dot to the N. And that same connection
12 stroke was observed and the known word "things."

13 I also noted, again, the formation and the shape of
14 the lower portion of the lower case G. That narrow eyelet was
15 observed in the known writing. And also the connection stroke
16 from the lower case G into the following character, S, and
17 note that the formation of the S is similar as well.

18 In the example of the questioned word "things" from
19 Government's Exhibit 705, again, we see the connection stroke
20 between the T and the H and that was also from the "things"
21 from Line 7. That same connection stroke was observed in
22 these known words "the."

23 Q Moving to the ninth page of your presentation. The words
24 "you," "that," "you," "know," and "know" appeared in the
25 questioned documents, did you observe those same words appear

G. Watts - direct - Tucker

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1 in the known documents?

2 A Yes.

3 Q Did you observe any similarities in those words?

4 A This is another example of within writer variation that
5 appeared in the question that also appeared in the known
6 writing. And that would be the formation of the lower case Y,
7 and I'm pointing to the lower case Y from Government's Exhibit
8 704, Line 6, and from 704, Line 8 under the question heading.

9 Note the variation here from the smooth bowl of the
10 Y and more angular bowl of the Y and that same variation was
11 observed in the known writing from the first example of "you"
12 and "the," also the "you" from the "you know that" string of
13 words from the known writing.

14 Also, there is that same formation of the lower
15 portion of the Y that appears that curl that with the
16 connection stroke back up to the O that appear in the known
17 versions of the word "you."

18 And then on Government's Exhibit 703, we see the
19 connection stroke between the T and the H again, and also from
20 the A into the T with that crossbar that only appears on the
21 right-hand side. Those characteristics were observed in the
22 known writing as well as indicated here on the second line of
23 the known portion of the chart and the word that.

24 And then from Government's Exhibit 703 and 705, the
25 word "know." I noticed a distinct formation of the lower case

G. Watts - direct - Tucker

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1 K. It almost looks like a lower case H, but where the writer
2 should have come back to the vertical portion to make the next
3 two prongs to create the lower case K, the writer just went
4 straight down without having met back at the vertical portion
5 of that character. And that same formation was observed in
6 the words know as indicated in the known writing.

7 Q Is that another example of a difference from what we
8 consider copybook style?

9 A Yes.

10 Q And you observed that both in the questioned documents
11 and the known documents authored by the defendant?

12 A Yes, I did. And then finally, there was the formation of
13 lower case W and how it curves off to the left on that final
14 stroke as I observed in the words "know" appearing twice in
15 the known writing here in this particular example.

16 Q Moving on to the 11th page of your presentation, the
17 words "thought" and "through" appear in the questioned
18 document and also in the known document; is that right?

19 A Yes.

20 Q Did you observe similarities in how those words and
21 letters from written?

22 A Yes, I did.

23 Q Please tell the jury?

24 A Again, this is another example of the TH combination here
25 that you can see from TH in "thought" from Government's

G. Watts - direct - Tucker

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1 Exhibit 706, Line 7. That same connection stroke was observed
2 in all three of the words from the known side, "thought" and
3 "through."

4 And then there's also the connection stroke from the
5 lower case G as I have indicated here from Government's
6 Exhibit 703. That connection stroke, again, appears as it
7 arches up from the baseline to the top of the character of the
8 lower case H.

9 There's also a vertical, almost like an angular turn
10 down, from the last stroke of the lower case H that appears in
11 the known writing through as well.

12 And then we also see the formation of the lower case
13 R and how it almost appears to be that lower case V because of
14 the lack of retrace back up that initial descending portion of
15 the character.

16 Q And finally, Mr. Watts, turning your attention to the
17 13th page of your presentation.

18 Are these same other words that appeared in the
19 questioned document and the known documents by the defendant
20 where you observed some similarities and how the words and
21 letters were written?

22 A Yes.

23 Q Please tell the jury what you saw.

24 A Here on the questioned side of the chart, you see the
25 words "quite" from Government's Exhibit 708 and the word

G. Watts - direct - Tucker

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1 "seek" from 708 as well.

2 Note the angular transition of the portion of the
3 letter Q as it transitions back up to the baseline. That same
4 angular, sharp transition was observed in the words "quickly,"
5 "frequently," and the word "etiquette" from the known writing.
6 And then here again we see that formation of the lower case K
7 and the word "blanket" from the known writing.

8 Q Mr. Watts, what was your ultimate conclusion about
9 whether the writer of Government's Exhibit 702 through 719,
10 the English documents, was the defendant?

11 A I determined that based upon the prevalence of
12 characteristics in common between the questioned and the known
13 writing, the defendant may have prepared the nonobliterated
14 English writing in the questioned letters.

15 Q Please explain to the jury what that means, what the
16 limitations are and why you weren't able to reach the
17 identification conclusion?

18 A When I received the questioned letters, they were scanned
19 images so I did not have access to the originals, and without
20 the originals I can't rule out the possibility of digital
21 manipulation.

22 Q Now, in the course of your examination did you see any
23 indication of digital manipulation?

24 A No.

25 Q What do you mean by digital manipulation?

G. Watts - direct - Tucker

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1 A If someone had access to image editing software such as
2 Photoshop, it is possible to digitally cut and paste someone
3 else's writing onto a document to make it appear as if they
4 prepared to when, in fact, they did not much like I created
5 this chart I used Photoshop. So I would cut and paste these
6 images that you see here from the body and paste them onto
7 this chart to create this chart.

8 Q And in the course of your examination, are you sometimes
9 able to see indications of digital manipulation?

10 A Yes.

11 Q Did you see any here?

12 A No, I did not.

13 Q Were the scanned images that you were able to examine,
14 the questioned documents 701 through 719, sufficiently
15 detailed for you to see details in stroke and tracing?

16 A Yes, in most cases.

17 Q Please explain.

18 A So one of the things that, say, a poor photocopy can
19 mask are characteristics of simulation or tracing, and that
20 can be very slow and deliberate poor line quality with blunt
21 beginning and ending strokes, even inking. And a bad
22 photocopy could mask those characteristics in some cases.

23 In this case, these photocopies were fairly good
24 quality and I could see thickening and thinning and dynamic
25 which are indication of dynamics speed in preparation and

G. Watts - cross - Ruhnke

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1 execution of this writing.

2 MR. TUCKER: I have no further questions, your
3 Honor.

4 THE COURT: Any cross?

5 MR. RUHNKE: Thank you.

6 CROSS-EXAMINATION

7 BY MR. RUHNKE:

8 Q Good afternoon, Mr. Watts.

9 A Good afternoon.

10 Q Just to put this in context a little bit. You're
11 employed by the FBI, basically, as a civilian employee in the
12 laboratory; is that correct?

13 A Correct.

14 Q You're not a special agent, you don't have arrest powers,
15 you don't carry a gun?

16 A That is correct.

17 Q Okay. And the FBI has a very large support staff in the
18 laboratory in Quantico, a wide variety of disciplines;
19 correct?

20 A Yes.

21 Q Now, handwriting analysis, questioned documents
22 examination such as you perform, results in a subjective
23 conclusion by the examiner based on training and experience;
24 is that correct?

25 A Not exactly. The subjectivity that comes from document

G. Watts - cross - Ruhnke

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1 examination is in the interpretation of the characteristics.
2 We still follow that scientific methodology in arriving at
3 their conclusions.

4 Q When you say, "scientific methodology," you're not
5 talking about ACE-V, are you?

6 A Yes.

7 Q Where is the science in ACE-V?

8 A It's a system of knowledge. It's a systematic approach
9 to arrive at the truth.

10 Q You start with analysis; correct?

11 A Yes.

12 Q Is there anything scientific with the analysis in the
13 sense if there is a database that you can go to that contains
14 objective criteria such as the percentage of the population
15 that writes Ts with a cross to the right?

16 A There's no database that we look at, no.

17 Q So where's the science in the analysis part?

18 A Again, it's the systematic methodology. So it's the
19 side-by-side comparison and we're looking for these
20 characteristics, and we approach every problem the same way.

21 Q So you start with analysis, that's you're looking at the
22 documents and making an initial determination is is there
23 enough signal here, is there enough material here so I can
24 compare anything, right, that's the first step?

25 A Yes.

G. Watts - cross - Ruhnke

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1 Q That's the analysis step?

2 A Yes.

3 Q And then, once you decided that you decided that there's
4 enough material that you can make a comparison, you move to
5 the C in ACE-V which is the comparison; correct?

6 A Correct.

7 Q And the comparison is that you sit there, you look at one
8 document and then you look at the next document, and you say
9 to yourself: Are there similarities that I am able to
10 observe; correct?

11 A Yes, correct, either similarities or dissimilarities.

12 Q So far there is no reference to any scientific database
13 or any independent body of information that you can draw on,
14 for example, to make a determination, well, only five percent
15 of the population does there is this way there's no such
16 database; correct?

17 A Correct.

18 Q And then you move on from the comparison to the
19 evaluation, the E in ACE-V; correct?

20 A Correct.

21 Q And the evaluation consists of you trying to reach a
22 determination as to is there identification? Is there a
23 maybe? Is there an inconclusive, et cetera, et cetera;
24 correct?

25 A It was one of the five conclusions that I --

G. Watts - cross - Ruhnke

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1 Q One of the five conclusions that you testified about
2 earlier; correct?

3 A Correct.

4 Q And you mentioned copybook style. I'm sorry, let's get
5 to the V in ACE-V, that's verification.

6 That means you turn over your conclusions to
7 somebody else to see if they can verify them?

8 A Our notes and the evidence go to another examiner in our
9 unit and they make sure we followed the proper procedures and
10 that all my notes do support my conclusion.

11 Q Does that examiner make his or her own independent check
12 of your actual conclusions, or just check to make sure your
13 methodology was proper?

14 A They check to make sure that my notes support my
15 conclusions and to check that I followed the methodology.

16 Q Do they make their own independent verification?

17 A In that verification, they are just checking to make sure
18 that I've followed all the procedures and that my notes
19 support their conclusion. If they don't, then they will bring
20 that up.

21 Q Right. So maybe I'm just not understanding.

22 Do you then turn over your whole case file to
23 somebody who does the whole same thing from start to finish,
24 or do they just look over the work that you've done?

25 A In some cases, we do that if it meets criteria. We have

G. Watts - cross - Ruhnke

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1 a blind refutation process where another examiner will rework
2 the entire case.

3 Q There was no blind verification in this case; correct?

4 A Not in this particular case.

5 Q And blind, just so we understand it, means that the
6 examiner is handed a body of evidence and asked to do exactly
7 the same thing that you've done without knowing what your
8 conclusion was; correct?

9 A Correct.

10 Q But in the case that we're talking about in this case,
11 the examiner knew what your conclusion was; correct?

12 A Yes.

13 Q Do you understand the word "confirmation bias" in
14 science?

15 A No.

16 Q Don't understand the idea that if you know what some
17 other examiner has reached before you make an independent
18 determination that science has should actually be blind. Do
19 you understand that?

20 A I understand.

21 Q You told us that there are individual variations even
22 among the known author; correct?

23 A Yes.

24 Q We don't all write our signature the same way every time;
25 correct?

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1 A That's correct.

2 Q And you're looking at those variations as something that
3 you're taking into consideration; correct?

4 A Correct.

5 Q Let me show you a document that I've marked Defendant's
6 Exhibit 7.

7 MR. RUHNKE: If I can approach the witness.

8 THE COURT: Sure.

9 MR. RUHNKE: Or if we put it on the screen for the
10 witness and the parties.

11 THE COURT: Go ahead.

12 Q Okay. Defendant's Exhibit 7, is this something you
13 wrote?

14 A Yes.

15 Q In fact, do I see the FBI laboratory seal in the upper
16 right-hand corner of that slide?

17 A Yes, that's correct.

18 MR. RUHNKE: Your Honor, I offer D-7 into evidence.

19 MR. PRAVDA: No objection.

20 THE COURT: Received.

21 (Defendant's Exhibit 7 was marked in evidence as of
22 this date.)

23 MR. RUHNKE: Can we display it to the jury, please.

24 THE COURT: Yes.

25 (The above-referred to exhibit was published to the

G. Watts - cross - Ruhnke

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1 jury.)

2 Q Was this originally part of that slide show you just
3 presented?

4 A This was one of the draft pages from my slide show;
5 correct.

6 Q Okay. But this wasn't displayed to the jury during the
7 Government's part of the case; correct?

8 A Correct.

9 Q And does this represent the conclusion that you reached
10 in this case with regard to the documents you just testified
11 about?

12 A That's the only thing I would add is the other known
13 writing, item 24, or the item 8 writer also prepared on the
14 second submission what I designated as item 24.

15 Q So the conclusion is without with regards to the actual
16 numbers, the questioned, nonobliterated English writing on
17 items X through Y may have been prepared by an item X writer.

18 A definitive determination could not be reached due to the
19 limited clarity and detail of the submitted items.

20 Was that the opinion you reached in this case based
21 on your analysis?

22 A Yes.

23 MR. RUHNKE: Your Honor, I have no further
24 questions.

25 THE COURT: Any redirect?

Proceedings

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1 MR. TUCKER: No further questions, your Honor.

2 THE COURT: You may step down. Thank you very much.

3 (Witness leaves the witness stand.)

4 THE COURT: Government's next witness.

5 MR. PRAVDA: Your Honor, we need a minute to set up
6 for the next witness.

7 THE COURT: Don't go anywhere, ladies and gentlemen.
8 Just a short break.

9 (Jury exits courtroom at 2:13 p.m.)

10 THE COURT: A real five minutes.

11 (A recess in the proceedings was taken.)

12 (Defendant exits from courtroom at 2:14 p.m.)

13 (A recess in the proceedings was taken.)

14 (Defendant enter from courtroom at 2:23 p.m.)

15 THE COURT: Okay. Everyone can be seated. We're
16 going to put the witness on the stand and we're going to bring
17 in the jury.

18 (A brief pause in the proceedings was held.)

19 MR. TUCKER: Judge, while we're waiting, just for
20 planning purposes the next witness after this is Professor
21 Vidino. I think Mr. Ruhnke and I were just conferring and
22 maybe that's a place to break for the day so we can do the
23 hearing.

24 THE COURT: How long is this going to take?

25 MR. TUCKER: He's Mr. Pravda's witness. How long

Proceedings

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1 will this take?

2 MR. PRAVDA: Your Honor, I think the direct is
3 probably under two hours.

4 THE COURT: Fine. Okay.

5 MR. RUHNKE: This witness?

6 (Witness takes the witness stand.)

7 (Continued on the next page.)

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Z. Ahmedzay - direct - Pravda

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1 COURTROOM DEPUTY: All Rise.

2 (Whereupon, the witness takes the stand.)

3 THE COURT: Be seated, please. The Government's
4 next witness.

5 MR. PRAVDA: The Government calls Zarein Ahmedzay.

6 Z A R E I N A H M E D Z A Y, called as a witness, by the
7 Government, having been first duly sworn/affirmed, was
8 examined and testified as follows:

9 THE WITNESS: Yes.

10 COURTROOM DEPUTY: State and spell your name.

11 THE WITNESS: Zarein Ahmedzay, last name
12 A-H-M-E-D-Z-A-Y, first name Z-A-R-E-I-N.

13 THE COURT: Make sure you speak into the microphone.

14 Mr. Pravda, you may proceed.

15 MR. PRAVDA: Thank you, your Honor.

16 DIRECT EXAMINATION

17 BY MR. PRAVDA:

18 Q Good afternoon, Mr. Ahmedzay.

19 A Good afternoon.

20 Q Are you testifying here pursuant to a cooperation
21 agreement with the Government?

22 A Yes.

23 Q Have you been convicted of any crimes?

24 A Yes.

25 Q What crimes have you been convicted of?

Z. Ahmedzay - direct - Pravda

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1 A Conspiracy to use a weapon of mass destruction,
2 conspiracy to kill foreign nationals, and giving support to a
3 terrorist organization.

4 Q Did you plead guilty to committing those crimes?

5 A Yes.

6 Q Are you, in fact, guilty of those crimes?

7 A Yes.

8 Q Can you describe generally what you did that makes you
9 guilty of those crimes?

10 A I made an agreement with a couple of my friends to go
11 overseas and fight. And then were sent back to the United
12 States to carry out an attack.

13 Q When you went overseas, where did you go?

14 A Pakistan.

15 Q Did you join any terrorist organization?

16 A Yes.

17 Q Which one?

18 A Al-Qaeda.

19 Q Did you undergo any military weapons training with
20 al-Qaeda?

21 A Yes, I did.

22 Q When you returned to the United States, what type of
23 attack did you intend to carry out?

24 A We intended to carry out suicide bombing attack, subways.

25 Q When did you commit those crimes?

Z. Ahmedzay - direct - Pravda

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1 A Between 2008 and 2009.

2 Q Ms. Clarke, if I could have the laptop at the podium.

3 Mr. Ahmedzay, showing you what is in evidence as
4 Government's Exhibit 101B, do you see that?

5 A Yes, I do.

6 Q Do you recognize the individual depicted in that
7 photograph?

8 A No.

9 Q Showing you Government's Exhibit 102 in evidence, do you
10 recognize the individual depicted in that photograph?

11 A No.

12 Q Showing you Government's Exhibit 103 in evidence, do you
13 recognize the individual depicted in that photograph?

14 A Yes, I do.

15 Q Who do you recognize that to be?

16 A That's Yousef, one of the trainers.

17 Q Who is Yousef?

18 A He was one of the trainers at the training compound,
19 al-Qaeda trainers.

20 Q Al-Qaeda trainer?

21 A Yes.

22 Q What kind of training did he provide?

23 A He provided what we call light-weapons training and
24 heavy-weapons training.

25 Q When did you take military weapons training with Yousef?

Z. Ahmedzay - direct - Pravda

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1 A This was about I think September 2008.

2 Q Mr. Ahmedzay, going into your background, can you tell us
3 how old you are?

4 A I'm 32 years old.

5 Q Where were you born?

6 A In Pakistan.

7 Q Where is your family from?

8 A From Afghanistan.

9 Q Where did you grow up?

10 A New York.

11 Q Did you come from Pakistan to New York?

12 A Yes.

13 Q How old were you at the time?

14 A About eight years old.

15 Q Where did you live in the United States?

16 A Queens.

17 Q What part of Queens?

18 A Flushing.

19 Q Did you attend school in New York?

20 A Yes.

21 Q Where did you go?

22 A I went to Flushing High School and Queens College.

23 Q Did you graduate from college?

24 A No.

25 Q How far did you go?

Z. Ahmedzay - direct - Pravda

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1 A Three years.

2 Q What did you study when you were in school?

3 A I was studying biology, secondary education.

4 Q Did you hold any jobs?

5 A Yes.

6 Q What jobs?

7 A I was a taxi driver.

8 Q A New York City taxi driver?

9 A Yes.

10 Q What -- during what time period were you a taxi driver?

11 A Between 2008 to 2010.

12 Q Are you married?

13 A Yes.

14 Q When were you married?

15 A 2007.

16 Q Do you have any children?

17 A Yes.

18 Q Do your wife and children live in the United States?

19 A No.

20 Q What languages do you speak?

21 A I speak Pashto, English.

22 Q What is Pashto?

23 A Pashto is the language of the people from Afghanistan and
24 Pakistan.

25 Q Is that your native language?

Z. Ahmedzay - direct - Pravda

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1 A Yes.

2 Q What religion are you?

3 A Muslim.

4 Q Are you currently in prison?

5 A Yes.

6 Q For how long have you been in prison?

7 A Since 2010.

8 Q Mr. Ahmedzay, can you describe your political and
9 religious views prior to 2006 generally?

10 A I wasn't really involved politically or...

11 Q Did there come a time when that changed?

12 A Yes.

13 Q When?

14 A It was 2006.

15 Q Can you briefly describe what caused that change?

16 A So I was going through a traumatic situation in my life.
17 And then one of my friends, Adis Medunjanin, gave me some
18 advice. You know, I was a little confused. He said, you just
19 need to dedicate your life to Allah and serve him. Don't
20 worry about people.

21 Q Did you change your behavior from that advice?

22 A Yes.

23 Q How?

24 A After that he took me under his wing and he gave me some
25 religious tapes. So I began to be more religious after that.

Z. Ahmedzay - direct - Pravda

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1 Q What kind of religious tapes did he give you?

2 A He gave me, you know, specifically he gave me tapes,
3 lectures of Anwar al-Awlaki.

4 Q Who is that?

5 A He's an American Iman, like a religious leader.

6 Q Did you listen to these tapes alone or with others as
7 well?

8 A Alone and with others.

9 Q Who were the others that you listened to the tapes with?

10 A It was Adis Medunjanin and Najibullah Zazi.

11 Q Mr. Ahmedzay, I placed Government's Exhibits 104 and 105
12 and 106 in front of you for identification, they are on the
13 table in front of you, do you see them?

14 A I do.

15 Q Can you flip through those photos?

16 A Yes.

17 Q Do you recognize them?

18 A Yes.

19 Q Who do you recognize them to be?

20 A 104 is myself, 105 is Adis Medunjanin, and 106 is
21 Najibullah Zazi.

22 MR. PRAVDA: Government moves admission of 104, 105,
23 106.

24 MR. MAHER: No objection.

25 THE COURT: Received.

Z. Ahmedzay - direct - Pravda

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1 (Government Exhibits 104, 105, 106 were received in
2 evidence.)

3 MR. PRAVDA: May I publish them to the jury?

4 THE COURT: You may.

5 Q 104, who is depicted.

6 A That is me.

7 Q Exhibit 105?

8 A Adis Medunjanin.

9 Q And 106?

10 A Najibullah Zazi.

11 Q How did you know Adis Medunjanin and Najibullah Zazi?

12 A I know Adis from my school, Flushing High School. And I
13 knew Zazi from the neighborhood, from the mosque.

14 Q Were there ways in which you became more religious other
15 than simply listening to the tapes that you mentioned?

16 A Yes.

17 Q What were those?

18 A So I began to read more of the Qu'ran and Hadiths. I
19 began to also, I began to be more politically inclined after
20 this.

21 Q What is the Qu'ran?

22 A The Qu'ran is the book of the Muslims, religious book.

23 Q And what is Hadiths?

24 A Those are the saying of Prophet Mohammed.

25 Q When you said you became more politically inclined, how

Z. Ahmedzay - direct - Pravda

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1 did you do that?

2 A So I became influenced by the lectures of al-Awlaki. He
3 said basically that being a Muslim is not just praying and
4 reading the Qu'ran, but you got to be, you got to participate
5 in Jihad to be a real Muslim, a true Muslim.

6 Q What is Jihad?

7 A Jihad is, as he described it, if you look at Afghanistan,
8 you look at in Iraq, the Muslims are being occupied and
9 oppressed. It is the duty of the Muslims to go over there and
10 fight basically.

11 Q That was the message that you were listening to that
12 al-Awlaki was delivering?

13 A Yes, sir.

14 Q How did you access these lectures and sermons from
15 al-Awlaki?

16 A At first I got the tapes from Adis. Later on I could
17 download them myself online.

18 Q How easily available were they online?

19 A Very easy.

20 Q What did you learn from listening to al-Awlaki's
21 lectures?

22 A Again, his message was, there was a lot of basic
23 knowledge about Islam. But also he spoke about Jihad and
24 sacrificing yourself, and you know, going overseas and
25 fighting. It is the duty and obligation upon Muslims to do

Z. Ahmedzay - direct - Pravda

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1 that.

2 Q Do you recall the names of any specific lectures that you
3 listened to by al-Awlaki?

4 A Yes.

5 Q What?

6 A There was one lecture which had a big influence on me it
7 was called, "Allah is preparing us for victory."

8 Q What was the content of that lecture?

9 A Well, in that lecture he said the Muslim, basically he
10 said the West, America and its allies, are determined to wipe
11 out Islam and Muslims. And he said, he spoke about clash of
12 civilization. He said this was depicted in the Hadiths of the
13 Prophet Mohammed. He basically said that if Muslims don't
14 stand up and defend the Muslims and don't defend the religion,
15 we'll be, a lot of them will be killed and oppressed.

16 Q Why did that lecture have a big influence on you?

17 A You know, he related, he spoke about history. He spoke
18 about how, for example, the Prophet Mohammed spoke about that
19 the Muslims were involved in a battle until the end between
20 Muslims and the Romans. Al-Awlaki said basically Europe and
21 the United States is an extension of the Roman Empire. This
22 is that same battle that the Prophet Mohammed was fighting.
23 He said basically you want to be part of that battle, if you
24 want to be a Muslim you want to be a follower of Mohammed,
25 this is what you need to participate in.

Z. Ahmedzay - direct - Pravda

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1 Q Did you want to be a part of that battle?

2 A Yes, definitely.

3 MR. RUHNKE: May I interrupt for a moment? I assume
4 none of this is offered for the truth of the matter but for
5 its impact on the witness.

6 THE COURT: Yes, I assume that too.

7 MR. RUHNKE: I request that limiting instruction.

8 THE COURT: Let's have a sidebar.

9 (Continued on the next page.)

10 (Sidebar conference.)

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Side-Bar

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1 MR. PRAVDA: Your Honor, I object that he said that
2 in front of the jury.

3 THE COURT: I don't know why you did stand up.

4 MR. RUHNKE: I should have asked for a sidebar.

5 THE COURT: How could be this be offered for the
6 truth? Mohammed wants us to do this, to do that. It's
7 clearly for the impact on this witness. The truth wouldn't
8 even matter to this. I'm not going to instruct, there is no
9 reason to instruct.

10 MR. RUHNKE: Thank you.

11 (End of sidebar conference.)

12 (Continued on the next page.)

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Z. Ahmedzay - direct - Pravda

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1 (In open court.)

2 BY MR. PRAVDA:

3 Q Mr. Ahmedzay, as a result of listening to these lectures
4 with your friends, did you, Adis Medunjanin and Najibullah
5 Zazi come to any agreement?

6 A Yes, we did.

7 Q What was that?

8 A We came to an agreement that we needed to be part of this
9 battle. We needed to find a way to get to Afghanistan. So we
10 made an agreement that we would travel there.

11 Q How did you make that agreement?

12 A Can you repeat that please?

13 Q How did you make that agreement? What were the
14 circumstances?

15 A So we made that agreement at the mosque, Abu Bakr Mosque
16 in Adis' car. We called it a covenant because we felt that it
17 was not just witnessed by the three of us, but also Allah was
18 also the witness. And basically we, I told them that I had
19 been to Afghanistan so I can get them to the Taliban. So we
20 agreed to eventually travel during that month.

21 Q When did you make this agreement?

22 A August 2008.

23 Q On that -- withdrawn.

24 Did you actually travel in August of 2008?

25 A Yes, towards the end of the month.

Z. Ahmedzay - direct - Pravda

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1 Q So the agreement was before that?

2 A Yes.

3 Q Now you mentioned the Taliban, what is the Taliban?

4 A Taliban was one of the insurgent groups fighting in
5 Afghanistan. We felt that they were waging Jihad, so that was
6 one group we could be part of.

7 Q Why -- were you aware that there were other groups
8 fighting in Afghanistan beyond the Taliban?

9 A Yes.

10 Q Why in particular did you decide to the join Taliban?

11 A I was married to my wife. She lives in Afghanistan in
12 Gardez. When I traveled there I heard about the presence of
13 Taliban in the town that's next to Gardez.

14 Q So you thought it would be easy to get to them.

15 A Yes, I did.

16 Q What did you do to prepare to travel over to join the
17 Taliban?

18 A So we made up a cover story. We bought tickets, visas,
19 and we bought electronics and other things that we intended to
20 give to the Taliban.

21 Q Mr. Ahmedzay, let me ask you about electronics, why did
22 you purchase electronics?

23 A We thought that could help the Taliban with their
24 propaganda. We bought computers, and video cameras.

25 Q So that they could make more propaganda?

Z. Ahmedzay - direct - Pravda

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1 A Yes, like videos and stuff.

2 Q What did you do to get the tickets?

3 A We went to a travel agency.

4 Q Did you purchase tickets?

5 A Yes.

6 Q What route did you purchase tickets for?

7 A From Newark Airport to Peshawar.

8 Q And Peshawar is in Pakistan?

9 A Yes.

10 Q Why did you decide to go that way?

11 A That was the normal way that I got to Afghanistan
12 previously when I visited my wife through Peshawar and then to
13 Afghanistan.

14 Q So you had previously been to Afghanistan to visit your
15 wife?

16 A Yes.

17 Q How many times had you gone?

18 A About three times.

19 MR. PRAVDA: Ms. Clark, can I show the witness what
20 is in evidence Government's Exhibit 206?

21 BY MR. PRAVDA:

22 Q Mr. Ahmedzay, do you recognize this map of Afghanistan
23 and Pakistan?

24 A Yes.

25 Q Just zooming in, can you show the jury where Peshawar is

Z. Ahmedzay - direct - Pravda

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1 by touching the screen?

2 A Peshawar is right over here.

3 Q Are you indicating --

4 A Yes.

5 Q -- are you indicating this area over here?

6 A Yes.

7 Q Pointing out where your wife is from, you said Gardez?

8 A Yes.

9 Q And is that where I'm circling over here?

10 A Yes.

11 Q That's in Afghanistan, right?

12 A Correct.

13 Q When you purchased tickets, did you purchase one-way or
14 round-trip tickets?

15 A Round trip.

16 Q At the time that you bought the tickets were you planning
17 to return to the United States?

18 A No.

19 Q Why did you buy round-trip tickets?

20 A We didn't want to raise suspicion of law enforcement.

21 Q Did you need visas to travel to Pakistan?

22 A Yes.

23 Q How did you get the visas?

24 A I went to the Pakistani consulate and filled out some
25 forms, paid a fee, then got my visa.

Z. Ahmedzay - direct - Pravda

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1 Q Where was the Pakistan consulate that you went to?

2 A In Manhattan.

3 Q You also mentioned you came up with a cover story, what
4 was the cover story that you came up with?

5 A The cover story was that I was visiting my wife. Zazi
6 was going to do the same thing, visit his wife. And Adis was
7 going to go get married to Zazi's cousin.

8 Q Was Zazi married?

9 A Yes.

10 Q Where was his wife?

11 A She was in Peshawar.

12 Q So you and Zazi and Medunjanin traveled to Pakistan?

13 A Correct.

14 Q Did you fly into Peshawar?

15 A Yes.

16 Q Where did you stay when you arrived in Peshawar?

17 A We stayed at Zazi's uncle's home.

18 Q What was your plan to travel from there to join the
19 Taliban?

20 A The plan was that we would take a taxi the next day or
21 following day and go across the border through the Herat pass.

22 Q Did you go through with that plan?

23 A Yes.

24 Q Did it work?

25 A Yes -- excuse me, no.

Z. Ahmedzay - direct - Pravda

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1 We got into a taxi and then we got pulled over by
2 the police.

3 Q Who did you get pulled over by?

4 A Pakistani police.

5 Q What was your understanding of why they pulled you over?

6 A They asked me questions, and were okay with the answers
7 that I gave. But when they asked questions to Adis, he
8 couldn't really answer them. He didn't speak the language,
9 that's when they got suspicious.

10 Q So when you say he couldn't speak the language, he
11 couldn't speak Pashto?

12 A Correct.

13 Q Was there anything else about him that made him stick
14 out.

15 A He was wearing western clothes, shirt, dress shirt and
16 pants. He also his complexion was light, light complexion.

17 Q So after the police pulled you over, what did you do?

18 A The police basically said that, they said, 'We believe
19 Adis is a spy, and you're his translator, so you guys are in
20 trouble.'

21 And at that point they said, you got to go to a
22 police chief to resolve this issue. So they put us in a car
23 and took us to the police chief.

24 Q Were you able to talk yourself out of trouble?

25 A Yes.

Z. Ahmedzay - direct - Pravda

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1 Q How did you do that?

2 A So I told the police, one of the guys, like, you know,
3 we're not, he's not a spy, he's a Muslim. And nor am I his
4 translator. And so after that we started to recite Qu'ran.
5 They believed us. They told us, tell the police you were
6 touring the area and they will probably let you go.

7 Q So when they let you go, where did you go?

8 A We went back to Zazi's uncle's home.

9 Q What happened then?

10 A At that point we tried to figure out another way to get
11 into Afghanistan. Zazi's cousin came to us with an offer. He
12 said he knows somebody, he knows the Sheikh in that
13 neighborhood who can help us.

14 Q What is a Sheikh?

15 A He's a religious leader.

16 Q So did you meet the local Sheikh?

17 A Yes.

18 Q What happened then?

19 A So we went to the local Sheikh. We told him our story,
20 that we're trying to get to the Mujahideen, the Taliban. And
21 he said this was an easy matter, he can help us. And he said
22 just wait for him to make a couple of phone calls and somebody
23 will come and help you.

24 Q Did you meet with any of the people the Sheikh contacted?

25 A Yes.

Z. Ahmedzay - direct - Pravda

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1 Q Tell us what happened?

2 A So a Pashto man showed up, said he was part of the
3 Taliban. He said he, in fact had experience helping others
4 get up to the Taliban. He mentioned John Walker Lindh, for
5 example. He said he helped him. He said he can also help us.

6 Q Did you have an understanding of who John Walker Lindh
7 was?

8 A Yes.

9 Q Who is that?

10 A He was one of the Taliban, American Taliban, who was
11 captured in the initial invasion of Afghanistan.

12 Q So what did you tell the man?

13 A So we told him, like, we trying to get to the Taliban.
14 He said he can help us. We basically agreed. He said he'll
15 pick us up tomorrow and we'll head our way.

16 Q Did you ever see him again?

17 A No.

18 Q Did you meet with any of the Sheikh's other contacts?

19 A Yes.

20 Q Tell us what happened?

21 A So the following day instead of the first guy, the second
22 guy showed up, Ahmad. And Ahmad was also Pashto. He said
23 he's part of, he's not part of the local Taliban group, more
24 he works with all the Mujahideen and that he can get us to
25 the, what he called the markaz of the Mujahideen, which is

Z. Ahmedzay - direct - Pravda

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1 like their central training place.

2 Q What did Mujahideen mean?

3 A Those who are waging Jihad, those who are fighting.

4 Q Where did he say was their central training place?

5 A In Waziristan.

6 Q Showing you Government's Exhibit 206 in evidence, is
7 Waziristan the area over here?

8 A That's correct.

9 Q That's on the border between Pakistan and Afghanistan?

10 A Yes.

11 Q Did you agree to go with Ahmad?

12 A Yes, I did.

13 Q Did he take you to Waziristan?

14 A Yes.

15 Q Did you and Adis and Zazi go?

16 A Correct.

17 Q How long did the trip take from Peshawar to Waziristan?

18 A Took about a day-and-a-half.

19 Q And did you have conversations during that trip that led
20 to you understand what group Ahmad was associated with?

21 A Yes.

22 Q What were those conversations?

23 A So there was many things that he mentioned. He said part
24 of his group, there are people from different places all over
25 the world, professionals, doctors, engineers. He said their

Z. Ahmedzay - direct - Pravda

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1 Jihad was not local, it was more global. So we understood it
2 to be he was speaking about al-Qaeda.

3 Q Did Ahmad say anything to you about what security
4 measures to follow?

5 A Yes.

6 Q What did he tell you?

7 A So he said hide your true identities, make up fake names,
8 so we did that.

9 Q What name did you choose?

10 A So I chose Omar. Adis went by the name Mohammed. And
11 Zazi went Salahuddin.

12 Q Are those nicknames referred to as kunyas?

13 A Sometimes.

14 Q Is that something that is common within al-Qaeda?

15 A Is it less common?

16 THE COURT: Is it common?

17 Q Is it something that is common within al-Qaeda to use a
18 kunya or a fake name?

19 A Yes.

20 Q Why is that?

21 A For security measures. They don't want to reveal their
22 true identity, that's one of the reasons.

23 Q Where specifically within Waziristan did Ahmad take you?

24 A He took us to Miran Shah, to a guest house.

25 Q Showing you Government's Exhibit 206. Is this Miran Shah

Z. Ahmedzay - direct - Pravda

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1 in north Waziristan?

2 A Yes.

3 Q Did you meet any people associated with Ahmad at Miran
4 Shah?

5 A Yes.

6 Q Who was that?

7 A So there were two men that we met. One of them went by
8 the name Abdul Hafeez, he was a tall, black man. And another
9 one by the name Ibrahim.

10 Q Can you describe Abdul Hafeez beyond just tall, black
11 man?

12 A He wore white clothing. He was also referred to as a
13 Sheikh, kind of like a religious leader. And he didn't look
14 like somebody who was a foot soldier, more of a leader, looked
15 more of a leader.

16 Q What is the significance is the white clothes?

17 A Again, he didn't look like somebody who was fighting,
18 getting dirty. He was clean. Like somebody who was giving
19 orders rather than the actual fighting.

20 Q His clothes weren't dirty?

21 A Yes.

22 Q Was he thin?

23 A Yes.

24 Q How old do you believe he was?

25 A He was probably late 40s.

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1 Q How did other people refer to him when you interacted
2 with Abdul Hafeez and others?

3 A They referred to him as Sheikh.

4 Q Did you believe him to be a leader?

5 A Yes.

6 Q Why was that?

7 A Again, he was like basically, you know, telling us what
8 to do and setting the tone of the conversation basically.

9 Q Did he have any electronics with him?

10 A Yes.

11 Q What did he have?

12 A So he had a GPS and also a video camera.

13 Q Did he have a driver?

14 A Yes.

15 Q Was it common in Waziristan to have electronics and a
16 driver?

17 A No.

18 Q You said there was a second individual that you met, who
19 was that?

20 A So he described himself as an Middle Eastern man from
21 Kuwait. He was about average height, average size. And he
22 also had AK-47 with him.

23 Q Just to be clear, the description you just gave that's
24 for the second person, right?

25 A Yes.

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1 Q What was his name?

2 A Ibrahim.

3 Q Did you and Zazi and Adis tell Abdul Hafeez and Ibrahim
4 why you had come to Pakistan?

5 A Yes.

6 Q What did you tell them?

7 A So we told them that we were originally trying to get to
8 the Taliban. But we're trying to join the Mujahideen, be part
9 of the Jihad. We eventually found our way to you guys.

10 Q How did they respond?

11 A So they were surprised. At first they said, it's not
12 easy to find us, to get to us. And they said basically if you
13 want to be part of the Jihad we can help you, train you, equip
14 you, and send you out. But they said they wanted us to do
15 something else. They wanted us to go overseas.

16 Q What did you understand mission to be -- withdrawn.

17 What did you understand them to mean to go overseas?

18 A They wanted us to go overseas to carry out an attack in
19 the United States. One of the things that we told them was
20 that we're here to librate Afghanistan. They said if you want
21 to do that, the best way to do that is to go back. And you're
22 just three guys, you're not going to really help fighting in
23 Afghanistan.

24 Q What did you understand them to mean when they said they
25 wanted you to carry out an attack in the United States?

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1 A Basically they wanted us to do a suicide attack in the
2 United States.

3 Q You considered that to be an act of martyrdom, right?

4 A Yes.

5 Q How did you respond?

6 A So we told them that that's not what we're here for.
7 We're trying to fight in Afghanistan. And we're not willing
8 to go back.

9 Q Did they take you to receive any kind of military weapons
10 training?

11 A Yes.

12 Q Before taking you for training, did they, did Abdul
13 Hafeez specifically give you any advice with respect to your
14 identities?

15 A Yes. He told us also to hide our identities, not to
16 reveal our identities, to chose other names, and not to tell
17 anybody where we're from.

18 Q How did you respond?

19 A So we told them that we already had chosen some names.
20 We told him about the names. He had said keep those names and
21 tell the people that you are from Peshawar. And he said that
22 Adis should tell people, the people that he meets, that he's
23 from Syria.

24 Q Did you have an understanding why Abdul Hafeez told Adis
25 to tell people he was from Syria?

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1 A Adis was light complexion. He was European decent. He
2 didn't speak the language of the Pashtos. He couldn't say
3 that he was from Peshawar or Pakistan. So he said he should
4 go by Syrian. Also, he said that he shouldn't mention that
5 he's from Chechnya or Bosnia because he might see people there
6 from those countries.

7 Q So what name does someone use when they want to tell
8 other people that they are from Syria?

9 A Suri or Shami.

10 Q Now after your meeting with Abdul Hafeez, did he take you
11 for your military weapons training?

12 A Yes, he did.

13 Q Where was the training?

14 A It was in Waziristan, I believe in South Waziristan
15 specifically.

16 MR. PRAVDA: Showing you Government's Exhibit 206,
17 in evidence.

18 Q Is this area where I'm circling over here, south
19 Waziristan?

20 A Yes.

21 Q Did Abdul Hafeez take you to a specific compound?

22 A Yes.

23 Q Who did you meet at that compound?

24 A So at that compound at first we met three different
25 trainers. One of them was a black man who went by the name

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1 Yousef. Another one was a southeast Asian man. And the third
2 one looked like a Middle Eastern man.

3 Q Showing you on the document camera, Government's Exhibit
4 103, this is the individual that you referred to as Yousef,
5 correct?

6 A Yes.

7 Q Can you describe Yousef?

8 A Yousef he's a black man, average height and weight, spoke
9 English. He was very fluent in English. He looked to be
10 somebody from the United States.

11 Q Was Abdul Hafeez there when you met Yousef?

12 A Initially when?

13 Q Was Abdul Hafeez present when you met Yousef?

14 A Excuse me?

15 Q Was Abdul Hafeez there when you were introduced to
16 Yousef?

17 A Yes.

18 Q You said that you thought Yousef looked to be somebody
19 from the United States?

20 A Yes.

21 Q Why did you believe that?

22 A Just the way he spoke. We made casual jokes. It was
23 like speaking to somebody from New York basically.

24 Q Did he say where he was from?

25 A No.

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1 Q Did he tell you anything about his experiences?

2 A Yes.

3 Q What did he tell you?

4 A He said he was there for about a year.

5 MR. RUHNKE: Object to the hearsay on that.

6 THE COURT: Sidebar.

7 (Continued on the next page.)

8 (Sidebar conference.)

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Side-Bar

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1 THE COURT: How does the recounting of this history
2 further the conspiracy?

3 MR. PRAVDA: Well, your Honor, he is meeting Yousef
4 for the first time. Yousef's military training is part of
5 his building rapport with Yousef. So that people like
6 Ahmedzay, Zazi and Adis will stick it out with the training
7 and go through it, and learn from Yousef and fight in
8 Afghanistan.

9 THE COURT: Building rapport.

10 MR. RUHNKE: I don't agree of that building rapport
11 furthers the conspiracy. And the question of how long he has
12 been there, which is what I objected to, it's obviously being
13 offered for the truth. And under the 812(e) exception I do
14 not see how this furthers any conspiracy.

15 There is points where background information and
16 recitation of past events does further conspiracy, I recognize
17 that, but this is not, this is just historical information.
18 He happened to be there a year. The reason I'm objecting to
19 it, it corroborates the Government's theory.

20 THE COURT: I understand why it's prejudicial. I
21 also think, number one, it is admissible, gives him gravitas
22 in saying he's been there for a year. It is used to establish
23 rapport. I don't think it's unduly prejudicial because the
24 probative value is high. I'll overrule the objection.

25 MR. PRAVDA: Your Honor, just to avoid future

Side-Bar

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1 objections to give you a preview where this is going. Mr.
2 Ahmedzay is going to testify about additional statements that
3 Yousef makes that are hopes of further actions. Yousef is
4 going to say that he had hoped to fight in Afghanistan. He's
5 going to describe the places that he hoped to be sent to.

6 THE COURT: I think that's all part of it. If you
7 think otherwise just say objection, I'll know what it is. If
8 I agree with you, I'll sustain it.

9 MR. RUHNKE: If we can take a break for the jury?

10 THE COURT: Can we go another 15 minutes or so?

11 MR. RUHNKE: Fine, your Honor.

12 (End of sidebar conference.)

13 (Continued on the next page.)

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1 (In open court.)

2 BY MR. PRAVDA:

3 Q Mr. Ahmedzay, what else did Yousef tell you about his
4 experiences and what he wanted to do?

5 A So he said he wanted to go into Afghanistan and fight.

6 Q Did he say anything about where in Afghanistan he want to
7 go?

8 A He wanted to go, he preferred being, going to south
9 Afghanistan in Kandahar or Helmand Province and not the
10 mountainous northeast.

11 Q Why was that?

12 A He said physically he wouldn't be able to handle the
13 mountains. He didn't think he could handle the mountains.

14 Q Approximately how long did you spend at this training
15 compound?

16 A A little more than a week.

17 Q What training did Yousef provide?

18 A Yousef gave us the light-weapons training and
19 heavy-weapons training.

20 Q What are light weapons?

21 A So light weapons were the handgun, AK-47.

22 Q What about heavy weapons?

23 A Heavy weapons consisted of the PK machine gun, the RPG
24 grenade launcher, hand grenade, there was also another
25 mortar-type of weapon.

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1 Q What was your schedule like at the training compound?

2 A Daily schedule started with religious session, prayers in
3 the morning, then physical session, then two sessions of
4 weapons training. And then at night we would stand guard and
5 guard the compound and switch during the night.

6 Q What was the specific training that Yousef provided to
7 you on the light and the heavy weapons that you described?

8 A So Yousef, he started with the AK-47. He told us the
9 names of the weapon, and both in English and Arabic. Then he
10 test us on that. He also taught us how to take it apart and
11 put it back together. The shooting positions of the weapon.
12 And then eventually going out and practicing with.

13 Q Why did you need to learn the name of the weapon in both
14 English and Arabic?

15 A He said when you go to Afghanistan to fight, when you go
16 there to fight you might be around Arab fighters, you need to
17 learn the names in Arabic.

18 Q How did Yousef train you and Adis and Zazi on the
19 shooting positions?

20 A He made us go around in circles then called out a number,
21 and each number corresponded to the shooting position. We'll
22 get into that position when he called out the number.

23 Q Did you say that you eventually went out and practiced
24 with the specific weapons?

25 A Yes.

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1 Q Can you tell the jury about that?

2 A So they drove us to an open hillside where they put
3 target marks in the ground. Then we used a different weapons
4 to shoot at those.

5 Q Showing you what is in evidence Government's Exhibit 50,
6 51, 52.

7 Showing you Government's Exhibit 50, do you
8 recognize that?

9 A Yes.

10 Q What do you recognize that to be?

11 A That's the AK-47.

12 Q Showing you Government's Exhibit 51 in evidence, what is
13 that?

14 A That's the RPG grenade launcher.

15 Q And showing you Government's Exhibit 52 in evidence, what
16 is that?

17 A They call it the Ashtari du mortar launcher on top of a
18 rock.

19 Q Do these look like the kinds of weapons that you trained
20 on and shot?

21 A Yes.

22 Q What was your understanding of the purpose of actually
23 having the opportunity to fire these weapons at the range?

24 A They were getting, they were getting us ready to go into
25 Afghanistan and eventually use them.

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1 Q Now Mr. Ahmedzay, during your training did you have any
2 more discussion regarding the possibility of an attack in the
3 United States?

4 A Yes.

5 Q Who were those discussions with?

6 A Well, they started in the beginning with Abdul Hafeez,
7 Ibrahim, and continued throughout the training camp.

8 Q Were there any additional individuals that you had these
9 discussions with?

10 A Yes.

11 Q Who?

12 A There was another man, another trainer, that showed up at
13 the compound by the name Hamad.

14 Q Can you describe Hamad?

15 A So Hamad was an Middle Eastern man, Arab, he was average
16 height, weight. He spoke Arabic, Pashto, and English.

17 Q Did you have any discussion with Hamad about his
18 background?

19 A No, I don't remember.

20 Q Did you learn, did you come to learn anything about his
21 background, his experiences?

22 A Yes.

23 Q What kind of training did he -- what did you come to
24 learn about Hamad?

25 A He said that he was in Afghanistan since the beginning of

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1 the invasion of the United States going into Afghanistan. He
2 said he was in the trenches when the bombs were falling. So
3 he said he was there for a while.

4 Q What kind of training did he provide?

5 A He kind of introduced us to explosive training.

6 Q What do you recall from the explosive training that you
7 received from Hamad?

8 A So he said there is three different parts to an
9 explosive. He said there was a primary part, the detonator;
10 the secondary part; and then a main load, which is the third
11 part of the bomb.

12 Q You testified that you had conversations with Hamad about
13 an attack in the United States; is that right?

14 A Yes.

15 Q What were the conversations?

16 A So Hamad he said that we would be of no use to them in
17 Afghanistan. He said there are many different fighters that
18 are better than us. And he said that he wanted us to go back
19 to the United States and carry out some attacks.

20 He also spoke to me about, you know, he asked me
21 about New York and do I know any parks, crowded places in New
22 York City. So I told him some different parts of New York
23 City.

24 Q What did you tell him?

25 A So he said, 'Do you know any places that we can use for

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1 an attack, crowded places?' I told him about Times Square,
2 Grand Central, and the financial district.

3 Q Did he suggest that you carry out any specific kind of
4 attack?

5 A At first he was telling us about like a bigger bomb
6 attack, like a car attack. But he also said if you can't do
7 that, then go with something smaller.

8 Q Did Hamad show you videos while you were at the training
9 compound?

10 A Yes.

11 Q What videos did he show you?

12 A So he showed us videos that were made by al-Qaeda. Most
13 of them were suicide missions, martyrdom operations.

14 Q Can you give examples of some the types of attacks that
15 were shown on the videos that Hamad showed you?

16 A One of the videos showed a car bomb attack on the Danish
17 Embassy in Peshawar, I believe Pakistan. And there was
18 another one which was the London bombings. And also other
19 attacks on the United States military in Afghanistan.

20 Q How did you know that these videos were al-Qaeda videos?

21 A They had the al-Qaeda logo, as-Sahab logo.

22 Q Showing you what is in evidence as Government's Exhibit
23 112. I'm directing your attention to the bottom right of the
24 screen, do you recognize what I just circled?

25 A Yes.

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1 Q What is that?

2 A That's the As-Sahab logo on the al-Qaeda video.

3 Q What is the As-Sahab?

4 A It's the media wing of al-Qaeda basically.

5 Q Do you recognize the individual depicted in Government's
6 Exhibit 112?

7 A Yes.

8 Q Who is that?

9 A Adam Gadahn, an American.

10 Q Who is Adam Gadahn?

11 A He's an American who is part of al-Qaeda.

12 Q Did you see any videos with Adam Gadahn in them?

13 A Yes.

14 Q Did you come to hear Adam Gadahn being described by any
15 other name?

16 A Yes.

17 Q What was that name?

18 A Abdul Hafeez referred to him as Azzam.

19 Q In what context did Abdul Hafeez refer to him as Azzam?

20 A Abdul Hafeez looked at Adis and said, you resemble Azzam.
21 We said, 'Who is Azzam?' He said, 'Adam Gadahn, the
22 American.'

23 Q Now when Hamad showed you these videos, what kind of
24 technology did he use to show the videos?

25 A He had a laptop and he also had an external hard drive.

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1 Q Did there come a time that you and Zazi and Adis decided
2 to conduct an attack within the United States?

3 A Yes.

4 Q When did you reach that decision?

5 A It was at the compound after watching the different
6 videos, and you know, Hamad telling us, he said, you guys came
7 here for victory or martyrdom, and now this is your chance.
8 This is the way. This is the way to librate Afghanistan.

9 One of the things that he mentioned, Hamad
10 mentioned, is that he said, he had a dream, prophetic dream,
11 where he beheaded a snake. He said that snake is America, so
12 it's glad tidings, kind of good news in the future, he's
13 saying.

14 THE COURT: Mr. Pravda, at a convenient time we
15 should take a break.

16 MR. PRAVDA: This is a perfect time, your Honor.

17 THE COURT: Ladies and gentlemen, don't talk about
18 the case amongst yourselves. We'll see you just after 3:35.
19 Take a 15-minute break.

20 (Jury exits the courtroom.)

21 (Whereupon, the witness exits.)

22 (Continued following page.)

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1 (The following matters occurred outside the
2 presence of the jury.)

3 THE COURTROOM DEPUTY: All rise.

4 THE COURT: You can all be seated. It's going to
5 take a while to get the jury lined up.

6 (The jury enters the courtroom.)

7 (Jury present.)

8 THE COURT: All right. Be seated, please.

9 Please continue, Mr. Pravda.

10 MR. PRAVDA: Thank you, Your Honor.

11 DIRECT EXAMINATION (CONTINUED)

12 BY MR. PRAVDA:

13 Q Mr. Ahmedzay, before the break you were testifying
14 about your wish to conduct a suicide attack, correct?

15 A Yes.

16 Q Did you and Zazi and Medunjanin make that decision
17 while you were at the training camp?

18 A Yes.

19 Q And you testified that was in September of 2008,
20 correct?

21 A Correct.

22 Q Now, Mr. Ahmedzay, you also testified earlier that
23 Yousef had been there for about a year at that point; is
24 that correct?

25 A Yes.

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1 Q Did that in any way factor into the decision that you
2 and Zazi and Medunjanin made?

3 A Yes.

4 Q How so?

5 A Well, the compound is not a -- you know, a good place
6 to be, and we're basically trapped in -- in a four-walled
7 compound; and, you know, they might be there for longer than
8 a year. And, like, I'll go through what I need to to get to
9 Afghanistan to fight, so... In a way, we didn't want to be
10 there, you know, just sitting around.

11 Q So if I'm understanding you correctly, are you saying
12 that you didn't want to be in the position that Yousef was
13 in where you might have to wait a year before you could go
14 to Afghanistan and fight?

15 A Yes.

16 Q And so you decided to go back to the United States and
17 carry out a mission there otherwise to achieve victory or
18 martyrdom?

19 A Correct.

20 Q Now, Mr. Ahmedzay, did you tell Abdul Hafeez about your
21 decision -- your decision that you and Zazi and Medunjanin
22 had made to carry out the attack on the United States?

23 A Yes.

24 Q And what was his reaction?

25 A He wanted us to immediately get the training, get the

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1 explosive training, and then fly to the United States the
2 next month.

3 Q So he wanted you to undergo additional explosive
4 training?

5 A Yes.

6 Q So explosive training beyond the training that you had
7 received from Hamad?

8 A Correct.

9 Q So at the end of the weapons training, did you then go
10 for explosive training?

11 A No.

12 Q What happened?

13 A So I told Abdul Hafeez that I needed to go to my
14 family -- to see my family in Afghanistan. So it would have
15 to be at least six -- six months later that we traveled. So
16 he gave us that time. He allowed us to travel to see our
17 families.

18 Q That was Abdul Hafeez?

19 A Yes.

20 Q And so did you make arrangements with Abdul Hafeez for
21 you and Zazi to return at a later time for explosive
22 training?

23 A Yes.

24 Q And when were you going to go back for explosive
25 training?

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1 A So it would be after a month, after a month down, a
2 month later.

3 Q And what about Medunjanin?

4 A He would fly back to the United States that same month.

5 Q Now, how did you leave the training camp?

6 A We -- we -- Abdul Hafeez drove us halfway to Peshawar,
7 and then we took a taxi from there.

8 Q I'm sorry. You took a taxi from where?

9 A Halfway between Waziristan and Peshawar, a place
10 called Bannu. That's where we -- we took a taxi.

11 Q Were you still within Waziristan at that point?

12 A Which -- which point specifically?

13 Q Sorry -- sorry. Let me just refer you to the map,
14 Government Exhibit 207.

15 Did you refer to Bannu; is that what you said?

16 A Yes.

17 Q And is that over here on the map?

18 A Correct.

19 Q You took a taxi from there to Peshawar?

20 A Yes.

21 Q Now, when you got to Peshawar, what did you do?

22 A I went back to the Zazi's house.

23 Q And from there where did you travel?

24 A So from there I went back to -- excuse me. I went to
25 Afghanistan from there to see my wife.

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1 Q Where in Afghanistan specifically?

2 A Gandiz.

3 Q And that's over here on the map where I'm circling
4 right now?

5 A Yes.

6 Q How did you get from Peshawar to Gandiz?

7 A I took a taxi.

8 Q And what path did the taxi travel?

9 A It went from Peshawar to the Torkham Border Pass. Then
10 from there I went to Kabul and then to Gandiz.

11 Q So a taxi to Kabul and then down to Gandiz?

12 A Yes.

13 Q Now, did you subsequently return to Waziristan for
14 explosive training?

15 A No.

16 Q Why not?

17 A So I told my family, my wife that I was, you know, with
18 the Taliban. She wasn't happy with that. And then when I
19 told her I wanted to go back, she said she -- she freaked
20 out and she said you've got to choose between us and what
21 you wanted to do. And she threatened to kill herself and my
22 daughter if I decided to go back. So, you know, I told her
23 that I can't handle -- I'm not going to go back. You know,
24 I'm going to stay with them.

25 Q So you made the decision not to go back to the

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1 explosive training?

2 A Correct.

3 Q Now, did there come a time when you saw Zazi again?

4 A Yes.

5 Q And where did you see Zazi?

6 A I saw him in Peshawar.

7 Q How long after the event that we're talking about?

8 A It was about three months after.

9 Q Did Zazi ask you what happened?

10 A Yes.

11 Q And what did you tell him?

12 A I told him the story between me and my wife.

13 Q Did Zazi tell you what he had been doing?

14 A Yes.

15 Q What had he been doing?

16 A He said he did go to the training -- to the training
17 camp for explosive training.

18 Q He did -- he did go to the explosive training?

19 A Yes.

20 Q And did you speak with him about what he learned during
21 this explosive training?

22 A Yes.

23 Q What did he tell you?

24 A He showed me his notebook that he had taken notes in.

25 Basically it was the three parts of a bomb. You know, the

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1 primary, the secondary, third -- and tertiary part and lower
2 part. He said he was basically able to make a car bomb at
3 that point.

4 Q Did you review Zazi's notebook?

5 A Yes.

6 Q Which contained notes that he had taken during the
7 explosive training?

8 A Yes.

9 Q Was it more advanced than what you had learned from
10 Hamad?

11 A Yes.

12 Q Now, when did you return to the United States after
13 that?

14 A I returned January of 2009.

15 Q And when you returned to the United States, where did
16 you live?

17 A In Queens, Flushing.

18 Q Did there come a point where you had recommitted to the
19 idea of conducting an attack in the United States?

20 A Yes.

21 Q When -- why did that happen?

22 A So, I went back to Queens College and I saw Adis there,
23 and he basically told me -- I told him the story between me
24 and my wife. He was not happy with that, and he said that I
25 needed to, you know, recommit myself. He reminded me of,

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1 you know, our agreement, our covenant that we made and he
2 said I needed to get back to -- you know, to recommitting,
3 basically, with our plan.

4 Q And did you recommit?

5 A Yes.

6 Q Now, Mr. Ahmedzay, during this time, did you continue
7 to listen to the lectures of Anwar al-Awlaki?

8 A Yes.

9 Q Why did you do that?

10 A It was to, you know, basically remotivate myself to be
11 ready.

12 Q Did you find listening to him to be remotivating?

13 A Yes.

14 Q I placed in front of you on your table
15 Government Exhibit 109 for identification. Do you see that?

16 A Yes.

17 Q Do you recognize that photograph?

18 A Yes.

19 Q Who do you recognize it to be?

20 A That's Anwar al-Awlaki.

21 MR. PRAVDA: Your Honor, I move
22 Government Exhibit 109 into evidence.

23 MR. RUHNKE: No objection.

24 THE COURT: Received.

25 (Government's Exhibit Number 109 so marked and

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1 received in evidence.)

2 BY MR. PRAVDA:

3 Q Now, Mr. Ahmedzay, did you and Medunjanin discuss the
4 al-Qaeda members that you had met over here?

5 A Yes.

6 Q And what did you discuss?

7 A So I had read an article about an al-Qaeda leader
8 getting killed in a drone strike, and the picture they had
9 was of Ibrahim, and I shared that with Adis.

10 Q So Ibrahim that you had known from the compound?

11 A Yes.

12 Q And what, if any, significance did that information
13 have for you?

14 A So they said he -- the article said that he was the
15 leader of external operations of al-Qaeda. He was also a
16 dual citizen of the UK and Pakistan, and his name was
17 Raushid Rauf. So at that point we kind of spoken to him
18 like -- we told each other that we had, you know, met a
19 leader of al-Qaeda.

20 Q And that also -- did that also help you recommit to
21 these attacks that you were going to carry out in the
22 United States?

23 A Yeah, it played a part.

24 Q Now, where was as Zazi at this point?

25 A He was in Colorado.

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1 Q Did there come a time that he traveled back to
2 New York?

3 A Yes.

4 Q Did you meet with Zazi and Medunjanin to plan an
5 attack?

6 A Yes.

7 Q And when was that?

8 A It was about April -- around April of that year, 2009.

9 Q Of 2009?

10 A Yes.

11 Q Where did you meet?

12 A We met at Kissena Park in Queens.

13 Q And what kind of attack did you discuss?

14 A So Zazi said that he was going to try making a car
15 bomb, and depending on what he was able to do, you know,
16 he'll come back and we'll basically -- you know, once he
17 experiments with it, he will come back and tell us what he
18 can and can't do.

19 Q And so was he contemplating a suicide car bomb attack?

20 A Yes.

21 Q And was that based on what Hamad taught back in
22 Pakistan?

23 A Yes.

24 Q Did you discuss the timing of when he would carry out
25 this kind of attack?

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1 A Yeah. We wanted it to be in Ramadan which was in
2 September of that year.

3 Q And just to be clear, what is Ramadan?

4 A Ramadan is a Muslim holiday.

5 Q Who was responsible for making these explosives?

6 A Nijibullah Zazi.

7 Q And did there come a time when you discussed with him
8 his progress on making a bomb?

9 A Yes.

10 Q When was that?

11 A It was the summer of that year.

12 Q And what did you discuss at that time?

13 A Well, he said that he experimented with it. He was
14 able to make the primary and secondary part, but he couldn't
15 make the bigger -- the bigger -- the bigger car bomb. So at
16 that point, I said that he -- he could make something
17 smaller like a suicide vest, and we basically agreed that he
18 was going to do that. And we changed our plan from a car
19 bomb attack to more of a subway attack.

20 Q So what happened next?

21 A So he went back to Colorado, and he was going to bring
22 the materials that we would assemble in New York. And when
23 he was coming back, you know, the law enforcement was
24 following him. So we scratched the plan.

25 Q Let me break that down. When Zazi came back to

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1 New York, was that in September of 2009?

2 A Yes.

3 Q And where did you first see him?

4 A I saw him in front of my house.

5 Q And what happened then?

6 A So he gave me a container, a glass container which he
7 said had the acetone peroxide in there, crystal kind of like
8 salt-kind of material. And he said to take it upstairs and
9 put it away.

10 Q And just to be clear, that was the explosive material?

11 A Yes.

12 Q And did he tell you at that time anything about his
13 trip from Colorado to New York?

14 A Yes.

15 Q What did he tell you?

16 A He said he got stopped at the George Washington Bridge
17 cross -- crossing in New York City, but he said the police
18 didn't find anything.

19 Q What effect did that have on you?

20 A I felt that they might be following me.

21 Q So what did you and Zazi do next?

22 A So I got into his car, and we -- we were going to go
23 into -- we were going into one of the masques, and we saw
24 police, law enforcement following us. And at that point
25 we -- he said he had some other material, explosive material

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1 in the car. So we went to the Muslim center and got rid of
2 those things.

3 Q And what did you do at the Muslim center?

4 A We went to -- he took the materials and we flushed it
5 down the toilet and threw away the containers.

6 Q And where did you go next?

7 A I went back to my home. And I also got rid of the
8 danger -- the explosive material that he had given me. I
9 flushed it down the toilet.

10 Q At that point were you still planning to go forward
11 with an attack?

12 A No.

13 Q Did there come a time that law enforcement searched
14 your house?

15 A Yes.

16 Q When was that?

17 A It was in September 2009.

18 Q And did you have an understanding of why they were
19 searching your house?

20 A Yes.

21 Q And when they were doing that, did you agree to speak
22 with agents from the FBI?

23 A Yes.

24 Q Where did you speak with them?

25 A In the FBI car.

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1 Q And without saying what you told the FBI, did you tell
2 the FBI the truth?

3 A No.

4 Q Just very generally, what did you say that was false?

5 A I didn't tell them the truth about my travels in -- in
6 Pakistan.

7 Q How long was that interview?

8 A About an hour.

9 Q Did you agree to be interviewed by the FBI again?

10 A Yes.

11 Q When was that?

12 A About a week after that.

13 Q And did you also lie during that second interview?

14 A Yes.

15 Q And, again, what did you say, very generally, that was
16 not true?

17 A About my travels and what I did in Pakistan.

18 Q Did there come a time that you were arrested?

19 A Yes.

20 Q When was that?

21 A It was January 2010.

22 Q What were you charged with at that time?

23 A On giving false statements to the FBI.

24 Q Did there come a time when you were charged with
25 additional crimes?

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1 A Yes.

2 Q What were you charged with?

3 A I was charged with giving material support to al-Qaeda,
4 conspiracy to kill foreign nationals, conspiracy to use a
5 weapon of mass destruction, and military weapon training.

6 Q Did there come a time when you agreed to speak with the
7 Government?

8 A Yes.

9 Q When was that?

10 A In April 2010.

11 Q And at that point did you engage in meetings with
12 the Government?

13 A Yes.

14 Q Many meetings?

15 A Yes.

16 Q Did there come a time that you pleaded guilty?

17 A Yes.

18 Q You testified earlier today that you pleaded guilty
19 pursuant to your cooperation agreement, right?

20 A Yes.

21 Q As a result of your guilty plea, what potential
22 sentences are you facing for your crimes?

23 A From time served to life.

24 Q What is your understanding of what your cooperation
25 agreement requires you to do?

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1 A It requires me -- it requires of me to speak the truth,
2 cooperate with the Government, and testify if I have to.

3 Q Did you have to tell the Government about any crimes
4 that you had committed in your life?

5 A Yes.

6 Q What is your understanding of what the Government
7 agreed to do under the cooperation agreement?

8 A So the Government presents a 5K1 letter --

9 Q And what is a 5K1 letter?

10 A It's a letter to the judge indicating my crime that I
11 committed, also it's that I cooperated and helped the
12 Government.

13 Q Did the Government -- I'm sorry. Withdrawn.

14 Will the Government request a specific or
15 particular sentence for you?

16 A No.

17 Q Who decides what your sentence will be?

18 A The judge.

19 Q If you violate the cooperation agreement, will you get
20 this 5K1 letter?

21 A No.

22 Q Do you get to take back your guilty plea?

23 A No.

24 Q Does your sentence depend in any way on whether the
25 defendant in this trial is convicted?

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1 A No.

2 Q Since your guilty plea, have you continued to meet with
3 the Government?

4 A Yes, I have.

5 Q And have you also met with the Government in
6 preparation for your testimony today?

7 A Yes.

8 Q Have you met with representatives of foreign
9 governments as well?

10 A Yes.

11 Q And have you previously testified in any trials?

12 A Yes.

13 Q How many times?

14 A Two times.

15 Q So this is your third time testifying?

16 A Yes.

17 Q Mr. Ahmedzay, if you lie under oath today, what happens
18 to your cooperation agreement?

19 A It will be breached and nullified.

20 MR. PRAVDA: Your Honor, no further questions.

21 THE COURT: All right.

22 MR. RUHNKE: Could we go to sidebar, Your Honor,
23 please?

24 THE COURT: Are you going to ask to start cross
25 tomorrow?

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1 MR. RUHNKE: Yes, sir.

2 THE COURT: Any objection?

3 MR. TUCKER: No, Your Honor.

4 THE COURT: All right. Ladies and gentlemen,
5 we'll let you go just a little bit early. Please remember,
6 stay away from the media and no communicating with anybody
7 at all about this case. When you leave the courthouse, the
8 case should no longer be on your mind. Go to a movie, read
9 a book, talk to a friend, anything other than this case.
10 And we will see you back here tomorrow morning at 9:30 a.m.

11 Have a good night.

12 (Jury exits the courtroom.)

13 (The following matters occurred outside the
14 presence of the jury.)

15 THE COURT: I want to check, Ms. Clark, maybe the
16 jurors want to go out this way, whatever you think is best.

17 (Pause in proceedings.)

18 THE COURT: All right. Have a seat, please.

19 All right. So what are we going to do next?

20 MR. TUCKER: Your Honor, I think what makes sense
21 now is to proceed here with the examination here of
22 Professor Vidino.

23 THE COURT: Yes. Let's just have the witness
24 removed.

25 MR. TUCKER: Absolutely. And just -- just so it's

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1 clear, we're just going to focus on the narrow subject at
2 issue here.

3 THE COURT: Correct.

4 MR. TUCKER: We're not going to do the...

5 MR. RUHNKE: That's my understanding, Your Honor,
6 as well.

7 MR. TUCKER: Correct.

8 THE COURT: Okay.

9 Is someone getting the witness?

10 MS. COOK: Yes, Your Honor. May we have the
11 witness take the stand?

12 THE COURT: Please.

13 MR. PRAVDA: The Government calls Dr. Lorenzo
14 Vidino.

15 THE COURTROOM DEPUTY: Please raise your right
16 hand.

17 **L O R E N Z O V I D I N O,**

18 called as a witness having been

19 first duly sworn/affirmed, was examined and

20 testified as follows:

21 THE COURTROOM DEPUTY: Please state and spell your
22 name for the record.

23 THE WITNESS: Lorenzo Vidino, L-O-R-E-N-Z-O,
24 V-I-D-I-N-O.

25 THE COURTROOM DEPUTY: You may be seated.

Vidino - Direct - Cook

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1 THE COURT: All right. You may inquire.

2 DIRECT EXAMINATION

3 BY MS. COOK:

4 Q Good afternoon.

5 A Good afternoon.

6 Q How are you currently employed?

7 A I am the director of the Program on Extremism at the
8 George Washington University.

9 Q And I am going to ask you to slow down just a little
10 bit for the sake of our court reporter.

11 What does the Program on Extremism do?

12 A The program researches cases of extremism, mostly
13 related to Islamic extremism in the United States and other
14 countries. And then we produce research, publish reports,
15 and provide whatever kind of training and dissemination of
16 our analysis.

17 Q How long have you been with the Program on Extremism?

18 A Since it was founded in June 2015.

19 Q And who founded it?

20 A I did.

21 Q Will you please describe your educational background.

22 A Sure. I have a law degree from the University of Milan
23 in Italy; and I have a Master's Degree and a Doctorate from
24 Fletcher School of Law and Diplomacy at Tufts University.

25 Q To obtain your Master's Degree and Ph.D., did you write

Vidino - Direct - Cook

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1 a thesis and dissertation?

2 A Yes. I wrote a thesis on Terrorism in the Netherlands
3 for my Master's. And I wrote a dissertation for my Ph.D. on
4 the Muslim Brotherhood in the West.

5 Q During the time that you obtained your Master's Degree
6 and your Ph.D., did you conduct research?

7 A I did extensively, yes.

8 Q And did you learn a particular methodology for
9 conducting research in the academic arena?

10 A Yes. I did it as part of the curriculum.

11 Q Will you please describe to the Court something about
12 what you learned about research?

13 A Well, you know, there's obviously different ways of
14 doing research. But a part of my academic training
15 particularly when you are obtaining a Doctorate, you receive
16 substantial training methodology, whether it be qualitative,
17 quantitative, you learn how to identify new sources. You
18 learn to identify -- improve your research skills.

19 I -- I took more of a qualitative route in my
20 research, but obviously, I'm familiar with quantitative
21 methods like statistics and so on.

22 Q Did you learn that it's important to verify sources?

23 A It's fundamentally important, yes. It's one of the
24 main things you learn.

25 Q And what are some of the means by which you could

Vidino - Direct - Cook

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1 verify a source?

2 A There's different ways. Of course, it's understanding
3 what the source is in sort of a hierarchy of sources,
4 primary, secondary, tertiary sources. Identifying, you
5 know, whether it's a respectable source or not; and
6 obviously, that's something you learn partially in school
7 and partially just with experience. I've been doing this
8 for 17 years, so...

9 Also you -- you double-check. You cross-check.
10 No matter how reliable the source is. If it's a primary
11 source, one does his or her own due diligence, and you try
12 to verify with as many sources as possible, authenticate
13 whether a certain document is true, how the author of that
14 document reached that conclusion.

15 Q What are some examples of primary sources?

16 A Primary sources, well, of course, you have to -- the
17 golden primary source which would be talking directly to
18 individuals who are engaged in the activities. And then
19 you -- you also can put in that category government
20 documents like court transcripts, like intelligence reports.

21 Q What would be an example of secondary sources?

22 A Secondary sources -- and again, within both primary and
23 secondary sources, you have a hierarchy.

24 Secondary sources would be things that are written
25 by individuals who witness the action, the activity but not

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1 necessarily directly involved in them. So, for example, it
2 would be newspaper articles. It would be an article from --
3 *The New York Times* would obviously be more reliable than an
4 initial inquiry or some sort -- or some sort like that.

5 Academic, scholarly work, obviously very
6 important. And, again, as well, depending on the publisher,
7 depending on the author, one learns which one tends to be
8 more reliable.

9 Q And what are tertiary sources?

10 A That would be sources one would normally not rely upon
11 unless we are pushed, which would be sort of the things you
12 find on the Internet which one tends to discard at times.
13 The only usefulness would be you get certain information
14 there and maybe you then look in secondary and primary
15 sources, if there is some kind of collaboration for that.
16 Otherwise, I think any decent scholar would then discard
17 that source of information.

18 Q So these methods of verifying and evaluating sources
19 are the methods that you continue to use today?

20 A Yes.

21 Q And I believe that you testified with your work at the
22 program on extremism, you conduct research in the field of
23 terrorism and produce reports there also; is that correct?

24 A Yes. I do. Some of them I write for myself, and then
25 I have a staff that works with me, and of course, I

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1 supervise their work. I edit their work as well.

2 Q Dr. Vidino, what is your field of expertise?

3 A Terrorism, extremism, radicalization.

4 Q And are there other individuals who also operate within
5 that field of expertise?

6 A Yes, quite a few.

7 Q Do you consider that to be an academic field?

8 A Yes.

9 Q And is there a body of academic literature that that
10 field draws upon?

11 A Yes.

12 Q Now, turning to this particular case, the case before
13 the Court today, have you been asked about concepts such as
14 forced radicalization?

15 A Yes.

16 Q And have you been asked whether there's a common
17 profile for someone who might be susceptible to
18 radicalization?

19 A Yes.

20 Q Have you also been asked to talk about whether a
21 direct, personal contact with a terrorist organization is
22 required for radicalization?

23 A Yes.

24 Q Are those topics that are seen within the body of
25 academic literature that you have described?

Vidino - Direct - Cook

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1 A They are some of the most common topics of
2 radicalization.

3 Q And is it possible to describe to the Court the scope
4 of that work in academic literature?

5 A It's very broad. And obviously, yes, there's --
6 there's a lot of things by a variety of scholars regarding
7 radicalization.

8 Q And the writings that we're talking about, would that
9 include scholarly articles?

10 A Yes. Those, obviously, are some of the best sources
11 you can find. But there's a pretty large scholarly
12 community worldwide that deals with the subject.

13 Q And do those scholarly articles draw upon research and
14 studies done by authors of those articles?

15 A The good ones, yes. Obviously, those are articles that
16 are based both on the knowledge of facts, analogous of those
17 facts, and then conceptualized in the literature.

18 Q Are there particular publications that are particularly
19 respected in your field?

20 A There are a few journals. I would say the top two
21 are -- one would be *Studies in Conflict and Terrorism*, and
22 the other would be *Terrorism and Physical Violence*. I would
23 say those are the two main journals. And then of course
24 there are books. And generally books published by
25 university presses tend to be more respected in the field.

Vidino - Direct - Cook

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1 Q Now, the two publications that you just mentioned, are
2 the articles that are published in those publications
3 peer-reviewed?

4 A Yes, very extensively.

5 Q Would you --

6 A More --

7 Q Please describe the peer review process.

8 A The more extensive the peer review, the more
9 prestigious the journal. So in the case of these two
10 journals, the author submits manuscripts to the editor. The
11 editor who in many cases is one of the leading authorities
12 in the field takes a look at it. If he thinks it's
13 potentially a good article, then he sends the article to two
14 peer reviewers who tend to be leading authorities within
15 that specific part of the -- of the field.

16 The peer reviewers who review the articles, give
17 the feedback and then recommend either not to publish the
18 article or to publish the article, or to publish the article
19 with substantial edits. Then the manuscript goes back
20 to the author. The author makes changes accordingly, sends
21 the article back. And if that kind of -- if that article as
22 edited is acceptable to the editor and to the two peer
23 reviewers, then the article gets published.

24 Q Have you yourself submitted articles to the two
25 publications that you described earlier?

Vidino - Direct - Cook

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1 A Yes, I have.

2 Q And did they undergo the peer-review process that you
3 described?

4 A Yes.

5 Q Do you yourself provide peer review?

6 A Yes.

7 Q And when you conduct a peer review in your field, are
8 you looking at the research and the data that's underlying
9 the report?

10 A It's one of the main things one looks at. It's the
11 kind of analysis, the data, the facts, the -- the analysis
12 that is done on those facts, and then the knowledge of the
13 literature, whether those facts, analysis are conceptualized
14 in the literature.

15 Q Have you ever provided feedback that a source could be
16 validated better or a study could be approached in a way
17 that would be more valid?

18 A It's one of the most frequent comments that any
19 reviewer makes.

20 (Continued on next page.)

21

22

23

24

25

Dr. Vidino - Direct/Ms. Cook

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1 (In open court; 4:16 p.m.)

2 DIRECT EXAMINATION

3 BY MS. COOK: (Continuing.)

4 Q The publication that you referenced, "Studies in Conflict
5 and Terrorism," who is the editor of that publication?

6 A Bruce Hoffman.

7 Q And who is Bruce Hoffman?

8 A Bruce Hoffman is a professor at Georgetown University.

9 He is the Director of the Security Studies Program in
10 Georgetown University and is arguably one of the leading, if
11 not the leading, authority on terrorism. Basically one of the
12 founders of the field dating back to the late '70s, early
13 '80s.

14 Q So the body of research and literature that you've
15 described, is that the basis for the understanding that you
16 have today of concepts such as radicalization?

17 A Yes.

18 Q How often do you review studies and research of this
19 nature?

20 A I'm sent articles, say, three, four times a year.

21 Q To peer review?

22 A To peer review.

23 Q Do you also read articles outside of doing peer review?

24 A If I what, I'm sorry.

25 Q Do you also read articles of this nature outside of just

Dr. Vidino - Direct/Ms. Cook

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1 peer review?

2 A Of course. One tries to read as many articles as
3 possible in the field of radicalization and terrorism,
4 obviously. Not all of them will be peer reviewed.

5 Q Dr. Vidino, to try to give the Court an illustration and
6 the sense of scope of what you're talking about, do you recall
7 offering a report in 2012?

8 A Yes, I do.

9 Q Within that report, did you talk about the -- or attempt
10 to define radicalization?

11 A I did.

12 Q Did you also talk about the lack of a quote, unquote,
13 terrorist profile.

14 A Yes.

15 Q For that particular report, which has been provided to
16 the defense as Government Exhibit 3500-LV-3, did you cite to
17 some of these articles and studies that you have been
18 describing?

19 A Yes, quite a few.

20 Q How many did you cite to?

21 A I guess around 25, 30.

22 Q 25 or 30?

23 A I didn't count them, but I would say just bringing it to
24 around 25, 30.

25 Q Is this just a small sampling of the amount of literature

Dr. Vidino - Direct/Ms. Cook

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1 available on the topic?

2 A That's a very small part of it, and some of the articles
3 I cite are literature reviews so they, themselves, condense
4 dozens and hundreds of articles.

5 THE COURT: Hang on one second.

6 Q Dr. Vidino, what is radicalization?

7 A Radicalization is the term of art used by academic and
8 policy makers to describe the process that an individual
9 undergoes when embraces an extremist ideology. And then, in
10 some cases, acts, undertake acts of violence in furtherance of
11 that ideology.

12 Q Is there any common profile of somebody who might be
13 susceptible to radicalization?

14 A A vast, vast majority of studies will tell you that there
15 is not. It's a very heterogeneous phenomenon that attracts
16 all sorts of people from backgrounds and profiles.

17 Q Is there any particular amount of time that is required
18 for radicalization to take place?

19 A No, absolutely not. You have cases of instant
20 radicalization, matter of days; and you have cases where
21 radicalization takes place over years.

22 Q Is it necessary to have, for an individual to have a
23 direct personal contact with a terrorist organization in order
24 for radicalization to occur?

25 A No. You have, again, all sorts dynamics at play, but I

Dr. Vidino - Direct/Ms. Cook

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1 would say in many cases in the West in particular there is no
2 direct contact between a radicalized individual and the
3 organization during the radicalization process.

4 Q Can radicalization occur with one individual who is
5 isolated?

6 A Yes.

7 Q Can radicalization also occur in a small group of
8 friends?

9 A That's also very common dynamic, yes.

10 Q Is there anything about the dynamic of a small group that
11 might contribute to radicalization?

12 A Sure. Obviously, every case is different, but within
13 small groups, you have dynamics of sort of an echo chamber
14 that forms with the group where individuals just talk among
15 themselves about a certain ideology and their embrace of that
16 ideology. In a way, they close themselves off from
17 alternative viewpoints.

18 There's also a normal dynamic in any kind of group
19 of individuals where one tries to outdo the other person and
20 is to be more into, in this case, the ideology than the
21 others. And that sort of competition within the group
22 generally accelerates the radicalization process.

23 THE COURT: How do you know that?

24 THE WITNESS: It's a fairly common dynamic and I
25 think you do see, for example --

Dr. Vidino - Direct/Ms. Cook

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1 THE COURT: How do you know?

2 THE WITNESS: For example, you surmise that in many
3 cases where you have -- where I've interviewed individuals who
4 are part of small clusters. And, obviously, their
5 recollections will be inevitably have some bias because
6 they're not necessarily, you know, you have to doubt what
7 they're telling you. But you put that together with, for
8 example, transcripts of wiretaps of many cases that I've seen
9 whether in the United States or in European countries and you
10 see those dynamics.

11 I've also had access to, for example, to chatrooms,
12 conversations, or e-mails or a variety of other electronic
13 communications among individuals who radicalize and it's quite
14 evident that you have -- that one tries to find the latest
15 ISIS video to show the other one is more knowledgeable than
16 the others. It's a fairly normal dynamic you have in any kind
17 of group of individuals or even benign interest, it could be
18 the New York Yankees, it could be antique cars, it could be
19 some extremist ideology.

20 THE COURT: Go ahead.

21 MS. COOK: Thank you, your Honor.

22 Q Dr. Vidino, would you say your field draws upon many
23 disciplines?

24 A Yes, that's very fair.

25 Q And particularly, from social science areas?

Dr. Vidino - Direct/Ms. Cook

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1 A Social science, psychology, history, security studies,
2 theology, sociology, I think it's quite a few.

3 Q A moment ago, you were explaining that as part of your
4 work you do sometimes interview a person yourself?

5 A Yes.

6 Q And would that be part of your research and your field
7 work?

8 A Yes, that's one of the most important parts.

9 Q Is that part of the method of verifying sources?

10 A Yes.

11 Q And is that part of the crosschecking of sources that you
12 were talking about earlier?

13 A Yes. Obviously, when it's possible. But, yes, that's
14 one of the best ways of doing that.

15 Q Dr. Vidino, do you focus on radicalization in the West?

16 A That's my main field.

17 Q Are you particularly interested in cases involving
18 westerners who have radicalized and who joined or supported
19 terrorist organizations?

20 A Yes yes.

21 Q Have you studied multiple cases of persons from the West
22 that have joined or supported terrorist organizations?

23 A Yes, that's my focus of research.

24 MS. COOK: Your Honor, if I could have a moment?

25 THE COURT: All right.

Dr. Vidino - cross/Mr. Maher

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1 (A brief pause in the proceedings was held.)

2 MS. COOK: No further questions.

3 THE COURT: Any cross?

4 MR. MAHER: Yes, please.

5 May I inquire?

6 THE COURT: Yes.

7 CROSS-EXAMINATION

8 BY MR. MAHER:

9 Q Professor Vidino, you are not a psychiatrist?

10 A No, I'm not.

11 Q You're not a neuroscientist?

12 A No, I'm not.

13 Q Not a psychologist?

14 THE COURT: Mr. Maher, save that for the jury. I
15 know he's not any of those things, get things that I need to
16 know.

17 MR. MAHER: I'm getting right there, your Honor.

18 Q You're not involved in conducting empirical research with
19 human beings; correct?

20 A No, that's actually not correct.

21 Q Explain.

22 A We do interview people. We do collect information on
23 individuals and then we try to put that together so that is
24 empirical research.

25 Q So have you conducted research involving a sample size of

Dr. Vidino - cross/Mr. Maher

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1 people who you believe are radicals and then conducted an
2 experiment to determine what variables either increase or
3 decrease radicalization?

4 A No, I have not.

5 Q Do you know of anyone who has conducted such an empirical
6 study?

7 A Not really.

8 Q Not really. You don't know of one, do you?

9 A No.

10 Q Right. Because one doesn't exist, does it?

11 A Probably not.

12 Q Probably not.

13 And probably part of the problem is first what is
14 the definition of radicalization. You agree that there is no
15 common, accepted definition; correct?

16 A Correct.

17 Q So the first step in trying to explain a phenomenon in
18 science at least is first to determine the definition of what
19 you're trying to figure out; right?

20 A Yes.

21 Q Right. You understand the scientific method, yes?

22 A Yes.

23 Q That one starts perhaps with a hypothesis, yes?

24 A Correct.

25 Q And you create an experiment to find out what variables

Dr. Vidino - cross/Mr. Maher

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1 may lead to a certain result; right?

2 A Correct.

3 Q And then you isolate variables and you have control
4 groups and non-control groups to figure out whether certain
5 variables actually are involved in causation; right?

6 A Correct.

7 Q And after you have tested your experiments with accepted
8 statistical methods, you can progress perhaps; right?

9 A Right.

10 Q And in this field of radicalization, no such process is
11 underway; correct?

12 A As far as I know.

13 Q Exactly. So you can't give us a definition of what
14 radicalization means, and what is your definition, or what is
15 the relevant scientific community's definition of the word
16 radical?

17 A It's somebody who adopts a -- radical is somebody who is
18 severely at odds with what is considered by mainstream
19 acceptable.

20 Q So is Lady Gaga a radical?

21 A I think there's a level of arbitrariness in that. I
22 would say most people would think not.

23 Q I'm asking you. In the quote, "relevant scientific
24 community," with the definition you just gave of radical, does
25 Lady Gaga fall under it?

Dr. Vidino - cross/Mr. Maher

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1 A I don't know where there are studies on whether
2 Lady Gaga's a radical. I would say probably not.

3 Q And so, does a member of the IRA fall under the
4 definition of radical?

5 A Probably, yes.

6 Q Probably what you need to know. What do you need to know
7 more?

8 A I don't follow.

9 Q Sure. You just said probably. So a member of the Irish
10 IRA likely is not a Jihadist violent radical under the
11 definition in your literature; correct?

12 A Mm-hmm.

13 Q Yes or no?

14 A Yes, correct.

15 Q But you're saying that this IRA member would potentially
16 be quote, "a radical," under the definition you're working
17 with now right?"

18 A Yes, it was part of the IRA that is engaged in a
19 preliminary process, and more people would have considered
20 that part of the IRA not radical because it's part of the
21 political process. There is no part of the Jihadist movement
22 that is involved in electoral politics, that's why they seem
23 more radical.

24 Q So participation or not in electoral politics is part of
25 the definition of radicalization?

Dr. Vidino - cross/Mr. Maher

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1 A It's one of the factors that would be considered,
2 absolutely, because the mainstream will accept democracy in
3 the electoral process as something that is commonly accepted.
4 Somebody that rejects the legitimacy of the democratic process
5 would be Western societies would be seen as somebody who is
6 radical.

7 Q Really. This is your definition of radical?

8 A I would say it's the most commonly accepted. It's one of
9 the factors that people look at, that sort of thing.

10 Q So what is the scientific community that is determining
11 what radicalization means?

12 A As I said in my report, there is no commonly accepted
13 definition of radicalization exactly like there is commonly
14 accepted definition of terrorism.

15 Q I didn't mean to cut you off.

16 I'm asking what is the relevant scientific community
17 involved in this endeavor of figuring out the process, if one
18 exists, of radicalization?

19 A You have a very heterogeneous and very large body of
20 academics with a variety of different backgrounds from
21 psychologists, psychiatrists, to people with more of my
22 background, more of a security studies background; with people
23 with a social science background, with people who have a
24 theology background. Because of the complexity of the
25 phenomenon, the idea is to bring together these different

Dr. Vidino - cross/Mr. Maher

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1 subjects.

2 Q There is no recognized scientific community of
3 researchers and academics who focus solely on the quote,
4 "radicalization process"; correct?

5 A No, I would disagree with that. There is a large
6 community that focuses on that. There is journals, there is
7 entire institutions, academic in nature, major universities
8 that just focus on that.

9 THE COURT: Are you talking about radicalization or
10 terrorism more generally?

11 THE WITNESS: Radicalization itself. One of the
12 most well-known centers in Kings College London is the
13 International Center for the Study of Radicalization. There
14 is an entire body with the European Commission made of
15 academics from all over the European Commission called the
16 Radicalization Awareness Network that has hundreds of
17 academics coming together on regular basis, I often go to
18 their meetings. So it's quite recognized, it's quite
19 mainstream.

20 Q And can you tell me the name of one academic organization
21 or professional society dedicated solely to the study of
22 radicalization?

23 A Professional society, no.

24 THE COURT: Mr. Maher, I don't think that's
25 relevant. It can be a subset of some other study. The

Dr. Vidino - cross/Mr. Maher

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1 question is, is it something that people who do a certain kind
2 of study have as part of what they do. So I don't care if
3 there is no professional society.

4 MR. MAHER: I can argue the point later.

5 THE COURT: Okay.

6 Q How many people, quote, unquote, "radicals," have you
7 personally interviewed?

8 A Probably around 30. It depends on what you mean by
9 radical.

10 Q In your mind, were all 30 of these people that you
11 interviewed radicals or not?

12 A The 30 I would give you are the ones that would be
13 Jihadists. I would give you a larger number if you consider
14 groups like the Muslim Brotherhood. Then we're talking about
15 a hundred individuals.

16 Q Well, let's take the first 30. You say they're
17 Jihadists, therefore, they're radicals?

18 A Yes.

19 Q And, again, that is your personal definition; correct?

20 A Shared by the majority of people in my field.

21 Q Who are the majority of the people in your field?

22 A The majority of academics and policy makers and law
23 enforcement professionals who are involved in my field of
24 study.

25 Q How many people are there?

Dr. Vidino - cross/Mr. Maher

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1 A It's obviously very difficult to determine definitely in
2 the hundreds.

3 THE COURT: Anything else?

4 MR. MAHER: Just a little bit, if I might, your
5 Honor.

6 Q What is the error rate in your field to determine whether
7 someone has undergone radicalization or not?

8 A I don't have an exact answer for that.

9 Q There is no error rate; correct? There's no error rate;
10 right?

11 A There is. I can't quantify it.

12 Q Well, that's the idea of an error rate is a
13 quantification of inaccuracy in measurement of deciding a
14 variable; correct?

15 A Yes, but I can't quantify what the error rate in doing
16 what exactly.

17 Q So, in other words, if you look at a case study of an
18 individual?

19 A Correct.

20 Q Who is, quote, a violent Jihadist and another academic
21 somewhere else on the planet looks at that person, you guys
22 could have, you and the other academic, could have a different
23 idea of whether there person is a radical or not; right?

24 A Yes.

25 Q There is no way to say who is right or wrong; right?

Dr. Vidino - cross/Mr. Maher

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1 A I think the majority would share one or the other
2 assessment. But, of course, yes, there are disagreements, I
3 would say, that's very common in the field of humanities any
4 subject you look at.

5 Q There is no process or deviance of radicalization that's
6 covered in the DSM-V?

7 A Not that I know of.

8 Q And you have written how this process can happen
9 instantly or take years; right?

10 A Yes.

11 Q There are no metastudies concerning radicalization;
12 right?

13 A You have a few studies that look at a relatively large
14 sample of a few thousand individuals.

15 Q Please name the metastudies that you are familiar with?

16 A There are a few studies, for example, on the FARC members
17 in Colombia.

18 Q Is that FARC, F-A-R-C?

19 A F-A-R-C, yes.

20 Q FARC being the left wing one might say --

21 THE COURT: I know FARC. Just go on, please.

22 A Depends also what you mean by metastudies, depending on
23 what sample you consider to be a large sample. Yes,
24 obviously, inevitably most studies would focus on a relatively
25 narrow sample which generally it's around, I mean, it's around

Dr. Vidino - cross/Mr. Maher

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1 a hundred or 200, tops.

2 Q These studies are basically based on anecdotal
3 assessments by various academics?

4 A Well, it's more of anecdotal assessments in some cases.
5 In some cases it is, in some cases it's deep interviews with
6 the subjects or with individuals deeply familiar with the
7 case. I mean, it's not just reading a couple newspaper
8 articles.

9 Q The interviews, there isn't some type of even checklist?

10 A Some academic do have checklists.

11 Q What I'm saying, there is no uniformed diagnostic method
12 in the field to determine whether anyone has undergone
13 radicalization; correct?

14 A Correct. They're not a commonly accepted.

15 Q There isn't a commonly accepted instrument; correct?

16 A Correct.

17 MR. MAHER: If I could have just a moment, your
18 Honor?

19 THE COURT: Okay.

20 (A brief pause in the proceedings was held.)

21 MR. MAHER: Nothing further as far as examination.

22 THE COURT: Any redirect.

23 MS. COOK: No, your Honor. Thank you.

24 THE COURT: You may step down.

25 (Witness leaves the witness stand.)

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1 THE COURT: I think, in the Daubert context, it's
2 the Government's burden to show qualification under Rule 702.

3 Let me hear from the Government first.

4 MS. COOK: Yes, your Honor.

5 THE COURT: The bottom line of his opinion is there
6 is no profile?

7 MS. COOK: Correct.

8 THE COURT: And he reaches that because he's done
9 extensive study in a recognized field of people who have
10 adopted violent causes.

11 MS. COOK: Yes, your Honor, that's right. And if I
12 failed to make the point, the main thrust of Dr. Vidino's work
13 is to analyze cases that have happened and derive trends.

14 THE COURT: His point is you can't derive trends.

15 MS. COOK: In terms of trying to come up with some
16 profile for someone who might be susceptible to
17 radicalization, that is correct.

18 THE COURT: Okay. And now applying Daubert, tell me
19 how it satisfies each level of Daubert review.

20 MS. COOK: Yes, your Honor.

21 If I could borrow the rule book for §702. First of
22 all, I believe that Dr. Vidino testified adequately as to his
23 specialized knowledge. He's been studying this area for
24 17 years. He has a masters degree and a Ph.D. in Security
25 Studies and he's currently the director of The Program on

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1 Extremism, and he's continued to learn, to educate himself, by
2 writing, by reviewing the literature in his field. If this is
3 information that will assist the trier of fact to understand
4 the evidence, then it can be used under Rule 702.

5 And as was laid out in the Government's letter filed
6 last night, this information is not being presented in a way
7 that is specific to the defendant. It is to educate the trier
8 of fact and address any preconceived notions that may exist
9 about whether a radical or terrorist looks a certain way or
10 comes from a certain background or has certain
11 characteristics.

12 THE COURT: Most of the background, his background,
13 that he gave, I take it you're going to give anyway for his
14 other areas on what he's going to testify; is that right?

15 MS. COOK: Actually, your Honor, I tried to be
16 specific to what I thought the purpose would be here and
17 address more of the peer review and the size of the academic
18 literature. It was not my intention to go into that in front
19 of the jury.

20 THE COURT: Okay.

21 MS. COOK: The rule also requires that the testimony
22 be based on sufficient facts or data, and Dr. Vidino talked
23 about an extensive body of literature that draws on research
24 that draws on studies that is done by academics by experts in
25 his field that is relied upon by other people who are experts

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1 in the field of terrorism and radicalization.

2 The rule also requires that the testimony be the
3 product of reliable principles and methods, and Dr. Vidino
4 talked about his training when he was receiving his degrees
5 and conducting research, how to select sources, how to vet
6 those sources, how to crosscheck those various sources.

7 And that is a process that goes on, that continues.
8 He is a peer reviewer. His work is peer reviewed. And the
9 experts within the field are obviously crosschecking each
10 other for research in the studies that they do.

11 And that's the basis for the preview of the
12 testimony that he gave when I walked him through the questions
13 about what is radicalization is there a common profile of
14 someone who is susceptible to radicalization. Is direct
15 personal contact with a terrorist organization required? He
16 is drawing upon that whole body as well as his own research
17 and his work in the past 17 years to render that testimony.

18 And whether the expert has then reliably applied the
19 principles and methods to the facts of the case, again,
20 Dr. Vidino talked about applying the various things he's
21 learned over his academic and professional career to write
22 those conclusions.

23 THE COURT: Okay. And last, tell me why it's not
24 unduly prejudicial? What is the probative value? Why is it
25 not substantially outweighed by prejudice.

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1 MS. COOK: Your Honor, I don't believe that the
2 testimony is prejudicial because as the Court points out --

3 THE COURT: If it weren't prejudicial, you wouldn't
4 offer it. The question is, is it unduly prejudicial?

5 MS. COOK: Right, not unduly prejudicial because
6 it's not specific to the defendant. It is for the purpose of
7 educating the jury and ensuring that the trier of fact
8 understands testimony that is being given in the case.

9 It's not an effort to point a finger at the
10 defendant to say he matches some profile, therefore, he has
11 been radicalized or he fits some definition, therefore, he is
12 guilty of these particular offenses.

13 What it does is it allows the jury to understand
14 what is the field that Dr. Vidino works in, and Dr. Vidino is
15 going to be testifying to them about other subjects such as
16 al-Qaeda and Jihadist propaganda. And, again, it's not
17 specific to the defendant, all it does is assist the trier of
18 fact to understand the evidence. I fail see how it could be
19 unduly prejudicial to Mr. Farekh.

20 THE COURT: Anything else you need to tell me?

21 MS. COOK: No, your Honor.

22 THE COURT: I will hear from the defense.

23 The problem I'm having is, and I get this in every
24 case where I have a social scientist testify, the opposing
25 side points out that he's not a biologist, he's not the kind

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1 of expert that was under consideration in Daubert which was
2 not a biologist but it was a hard science, and so it's much
3 more empirical. It's quantitative as opposed to qualitative.

4 But if you're going to have social scientists
5 testify as experts, and I have this discussion about Kohlmann
6 when he was before me in another case, what more to social
7 scientists do this guy didn't do to reach the conclusion that
8 he's reaching?

9 MR. RUHNKE: Part of the problem, the reason why I'm
10 arguing is, I've done the research on this with Ms. Ferrone,
11 is that there is no there there if I can use that sentence.

12 THE COURT: But that's their whole point, you see,
13 that there is no there there.

14 MR. RUHNKE: May I read what Dr. Vidino wrote in an
15 article that's par of the Government's Jencks Exhibits LV-3.

16 He says, "One the few things over which the majority
17 of scholars agree is that radicalization is a complex and
18 highly individualized process often shaped by a poorly
19 understood interaction of structural and personal factors.
20 There is no grand theory of radicalization, no one path to it.
21 No catch-all explanation and no common terrorist profile.

22 If anything, this is a nascent development,
23 developing area perhaps of social science. But in the grand
24 scheme of things, of this case and this prosecution and this
25 defendant, what difference does it make that there is a

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1 process called radicalization?"

2 THE COURT: Let's put our cards on the table as I've
3 tried to do this morning. What's really going on here is the
4 Government is afraid that the jurors might go back there, and
5 one or more of them might say: A nice kid in a college, how
6 could it be him? I don't really care what all that evidence
7 was and the DNA and the handwriting and the fingerprinting.
8 He's a nice college kid, it can't be him.

9 And the purpose of this evidence is so that another
10 juror can say to that juror: It can happen to anybody. Did
11 you hear that doctor testify? It can be even a nice college
12 kid. It can be a poor kid or a rich kid, a group of kids or a
13 single kid, and so that's why the Government's offering this
14 evidence to plant that.

15 MR. RUHNKE: Isn't it just a matter of common sense
16 that it can happen to anybody, and doesn't the case study of
17 the witness, who is on the witness stand right now, who is not
18 particularly religious in 2006 but became influenced by others
19 of his community, became influenced by people like Anwar
20 al-Awlaki and other Islamic preachers who preached Jihadist
21 doctrine. That's going to be buttressed by Mr. Zazi who
22 underwent the same process.

23 I respectfully suggest this doesn't mean much in the
24 context of this case. What point is their putting on a
25 witness who says, I'm here to talk about radicalization but

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1 nobody knows what that means and nobody agrees on what it
2 means. There is no common definition of radicalization.

3 THE COURT: The point is, it could be anybody. The
4 kid next door, could be that kid.

5 MR. RUHNKE: Calling an expert --

6 THE COURT: I think you've asked the right question,
7 is it within the jury's ken? Does the jury understand that it
8 can happen to anybody, or at least can they figure it out in
9 their deliberations. Do they need this?

10 MR. RUHNKE: Nice people commit murders and I've met
11 a lot of them. And it just -- it's just we don't go, as I
12 started to say this morning, into a murder case saying here's
13 the -- anybody can commit a murder. It's common sense.
14 Anybody can bill.

15 THE COURT: The question whether this phenomenon of
16 leaving a secure environment and going off to fight Jihad is
17 so different than someone getting tipped over the edge and
18 committing a murder. That is not within the ken of the
19 average jury.

20 MR. RUHNKE: I would suggest that it's clearly
21 within the ken of an average juror. Anybody can go off the
22 rails. My crazy uncle who did this, or my sister's son who
23 one day woke up.

24 There's just common sense and I think it's
25 confusing. I think the fact that it's completely unformed

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1 goes further to not so much the danger of unfair prejudice as
2 simply confusing the issues.

3 THE COURT: All right. Okay. 9:15 tomorrow.

4 MR. TUCKER: Your Honor, before we break for the
5 today can we briefly talk about tomorrow for a minute.

6 THE COURT: Okay.

7 MR. TUCKER: So the Government's plan would
8 professor Vidino obviously after we complete cross-examination
9 on Mr. Ahmedzay. I know your Honor is waiting for a filing on
10 Mr. Kohlmann. You might have notice Ms. Komatireddy has been
11 scarce the past two days that is ready for me to review and us
12 to file within an hour or so.

13 THE COURT: Okay.

14 MR. TUCKER: At that point, I think we reach a
15 little bit of a crossroads and I frankly wanted to get a sense
16 of what your Honor and the defense was thinking.

17 Tomorrow is our last trial day before we break for
18 four days. The Government's preference, and I think what
19 makes sense in light of what I think your Honor is going to be
20 getting, the Government's preference would be to break
21 tomorrow after Professor Vidino's testimony so that the Court
22 will have an opportunity to review the materials or the letter
23 that we're expecting to file and pick up with Mr. Kohlmann and
24 what I would expect would be three short fact witnesses at
25 which point the Government would rest.

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1 THE COURT: Monday.

2 MR. TUCKER: Yes, your Honor. I'm sorry, your
3 Honor. Right. And my colleague reminds I should make the
4 caveat that at this moment it is not the Government's
5 intention to call Mr. Zazi. We will see how cross goes
6 tomorrow, but we are also mindful of not wasting the jury's
7 time.

8 And so, with that in mind and our sense and our
9 expectation is we rest Monday even if we stopped with
10 professor Vidino tomorrow. So that would be our preference
11 and I think it would allow the Court adequate time to review
12 our filing and rule on address any issues that might.

13 THE COURT: Any objection to that?

14 MR. RUHNKE: We're fine with that proposal.

15 THE COURT: I think that sounds okay. We still
16 might need to squeeze some CIPA proceedings in this schedule.

17 MR. RUHNKE: Just so you know does the Government
18 intend to make a classified filing?

19 MR. Tucker: Yes. My understanding, and I have not
20 read it yet, your Honor, I am going to walk back and read it
21 now. My understanding it is a classified ex parte filing.

22 MR. RUHNKE: Okay, that was my next question whether
23 it's going to come to us in a classified form.

24 THE COURT: You get the night off.

25 MR. RUHNKE: Yeah.

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1 THE COURT: Okay. All right. Let's meet, I think,
2 9:20 is enough. I will give you a ruling on this issue
3 tomorrow morning and then we'll see where we go. Okay.
4 Thanks.

5 Have a good night.

6 (Defendant exits from courtroom at 4:51 p.m.)

7 (WHEREUPON, this matter was adjourned to September
8 20, 2017.)

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